

# THE CONSTITUTION OF INDIA

By

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**Author of SOCIOLOGY (An Analysis of Sociological Principles)  
And ELEMENTS OF CONSTITUTIONAL LAW.**

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## IV

*By the same Author*

**SOCIOLOGY** (An Analysis of Sociological Principles)

**ELEMENTS OF CONSTITUTIONAL LAW**

**TO THE SACRED MEMORY  
OF  
MY DEAR FATHER**

**NOSHIRWAN HORMUSJI BALSARA  
(1891-1936)**

**Judge, Advocate and Educationist**

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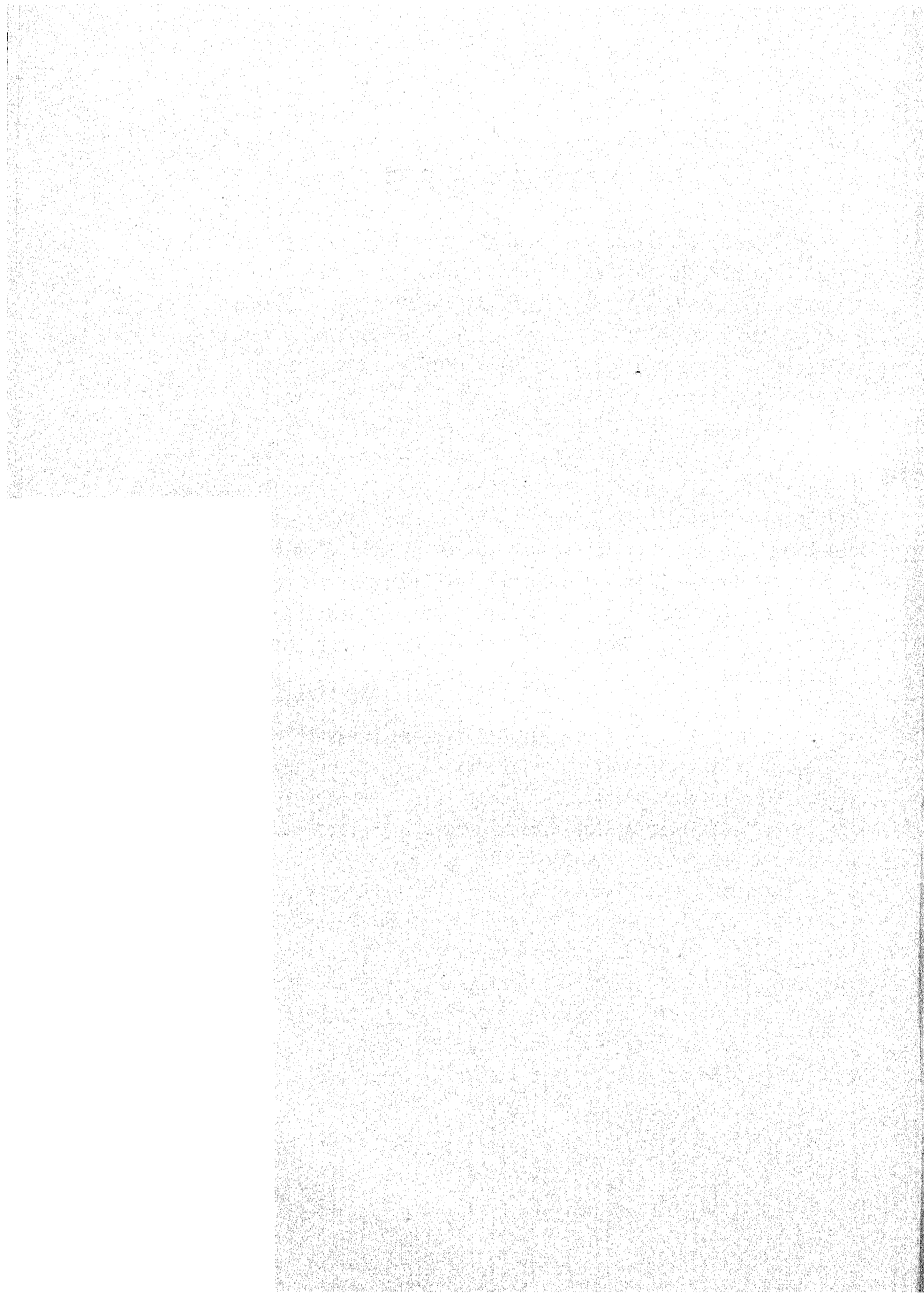
## FOREWORD

It is true that freedom and the free institutions cannot long be maintained unless people understand the nature of their own Government and their Constitution. Since the inauguration of India's new Constitution, there is a steady stream of Constitutional literature pouring forth in the country. The present Volume: "The Constitution of India" by Prof F. N. Balsara will prove to be useful not only to the students interested in the constitutional Law but also to the lawyers and the legislators as well. Prof. Balsara has fully elucidated all the aspects of our Constitution and without burdening it with case law and other elaborate discussions, and important issues raised in our Constitution and narrated them with facility, clarity and fairness. It is hoped that the volume will be a good addition to our Constitutional literature and prove to be effective aid for the proper study of our Constitution.

Although India's Constitution is comparatively quite recent, it has, however, passed through the weather and stood the test well. The public opinion, which is the ultimate sovereignty so far as any change in the Constitution is concerned, has yet to develop fully in this country. It is only such publication like Prof. Balsara's which can help the opinions to ripe and mature. A critical examination of the events of the last decade of the Democratic Government in our country by Prof. Balsara leads to appreciation of the Constitution and crystalises the opinion as to how far it has succeeded in establishing the social, economic and political structure of our country. I congratulate Prof. Balsara for the production of this fine volume and wish that it may serve the purpose for which it is meant.

S. L. SILAM,  
*Speaker.*

*Bombay Legislative Assembly*



## PREFACE

Since the enactment of our Constitution in 1950, there have been a number of illuminating treatises on the Indian Constitutional Law. The present volume is a fairly complete introduction to the study of the Constitution of India. It was published in 1956 with my **ELEMENTS OF CONSTITUTIONAL LAW**, but with the States' Reorganisation Act, 1956, it was felt that the book be revised and brought upto date. The result is a separate and a bigger volume on the 'Constitution of India,' with amendments upto December, 1957.

The object of this publication is to present in a single compact volume of moderate size an exposition of the Constitution which will fully meet the requirements of all categories of students appearing for their M.A., B.A., LL.B. and I.A.S. examinations. For this purpose I have divided the book into two Parts. In Part I the various important subjects of the Constitution have been discussed without burdening it with case law; while in Part II the same subjects have been dealt with article-wise, but even here I have not refrained from offering criticism whenever called for, which I am sure will prove useful not only to good and critical students but also to reformers and legislators. Every topic has been discussed properly and critically and relevant references have been given in the table of contents and the index. The book will also be instructive to the free citizens of this country who wish to understand their Constitution, and understand it well.

Our Constitution is comparatively quite recent. Yet it has stood the test well. It is true that it is based on a study of the various leading Constitutions of the world and incorporates in it several ideas and conceptions which have been borrowed from other Constitutions. The framers have relied on a number of patterns: the English Constitutional Law was the guiding factor for the parliamentary system of government; American Constitutional Law for the fundamental rights, the Canadian and Australian Constitutional Law for reconciling federalism with the system

of government adopted and the Constitution is in places an adoption of the Government of India Act, 1935. But whatever be the sources of inspiration, one fact stands out supreme and that is, that our Constitution is framed for the welfare of the people of this country. It is the bulwark of our rights and the supreme law of the land. It is therefore the duty of every citizen to respect and uphold it to the best of his ability and knowledge. But in order to get this consciousness a critical study is required, for W. Wilson has correctly stated, "No more vital truth was ever uttered than that freedom and free institutions cannot long be maintained by any people who do not understand their Constitution." We are making all efforts to make our people Five Year Plan conscious, we must also make them constitution conscious. It is only then that public opinion, which is the ultimate sovereignty in so far as any change in the Constitution is concerned, will blossom to its best. My efforts will amply be rewarded if I succeed in stilling in the minds of our young men and women, who are truly the future leaders and legislators of this country, this sense of respect and due attachment to our Constitution.

I sincerely acknowledge my indebtedness to the works of all eminent writers on the subject of Constitutional Law and Government. I thank my colleagues at the Government Law College for their help and guidance and encouragement. I also thank Principal K. R. Mehta, Government Law College, Bombay, for his constant encouragement in this direction.

I sincerely thank Hon'ble Shri S. L. Silam, Speaker, Bombay Legislative Assembly, for his kind foreward to this book.

I have also to thank Shrimati D. F. N. Balsara who has helped me unflinchingly at every stage in the preparation of this work. I must also thank my publisher, Shri Babubhai Lakhani for helping me in bringing out a separate volume on the Constitution of India.

I shall be glad to receive from all my readers, especially from the teachers on the subject, suggestions for further improvements to be made in this book, when a new edition is to be brought out.

F. N. BALSARA

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# INTRODUCTION

“If men were angels, no government would be necessary. If angels were to govern men neither external nor internal controls on Government would be necessary. In framing a Government which is to be administrated by men over men the great difficulty is this: you must first enable the Government to control the governed, and in the next place oblige it to control itself.” (Madison).

Independence dawned on our country on 15th August, 1947 and we were called upon to frame our own Constitution—our all-paramount law. The united wisdom and political experience of the different countries of the world were at our command in framing our Constitution. Even then the task was not an easy one. Our Constitution is a conscious and a deliberate act of the practical jurists and statesmen in the Constituent Assembly of India, who were given this noble task of framing the Charter of our Government from the political doctrines and experiences of other countries, so that it may serve the same purpose as it had done in those countries, viz. to establish a working government suitable to the genius, temperament and culture of our people. In framing this document, our framers have embodied and established for the good governance of this country the following fundamental principles:—

1. that government should be controlled by written fundamental laws. This would easily fix the boundaries within which it has to work, but these boundaries should be sufficiently broad so as to ensure the liberties and rights of citizens.
2. that government is not the master of all those who live under it but a servant who should be subject to their will.
3. that fundamental rights should be guaranteed to all the citizens of the country. The Supreme Court has no doubt been made the watch-dog of our Constitution, yet

it has a sacred duty to protect these fundamental rights granted to the citizens of India by the Constitution,

4. that government is to be a representative democracy,
5. that the welfare of the citizens, irrespective of caste, colour or creed, is to be the primary object, which is to be secured by social, economic and political justice as laid down in the Preamble, and finally,
6. that the dignity of the individual and the unity of the Nation must be maintained at any cost.

It would be too early to say that our Constitution, like the American Constitution is "the most wonderful work ever struck off at a given time by the brain and purpose of man" (Gladstone). It has, therefore, many critics. Sir Ivor Jennings is critical about its length and prolixity and wants a simple Spartan constitution. But no constitution can ever boast of being perfect. The essential purpose and the primary aim of the constitution is to serve the needs of the people. It is one thing to draw up a constitution and quite a different thing to work it in actual practice. Another criticism is that the amending process is most facile (or flexible) and we have had seven amendments within the last seven years. If we agree with this view then we have to strike a note of caution against this great haste we have shown in amending our Constitution. But we cannot suggest for one moment that a constitution struck off at a given time by the brain and purpose of man should be good and can be good for all times to come. "No society or nation can make an eternal constitution for itself. There is no eternity in constitutional jurisprudence, which is always temporary, but solves and re-solves the variable human purposes by a process of continual adjustments of common good and community living." (Mukherjea J.). But the fundamental principle remains true, as the learned Judge points out in his address, that "you should not change the constitution unless the situation is impossible and constitutional amendment should be the last resort and not the first impulse to get rid of every obstruction. Nation has to acquire the discipline to submit

to final decision from a particular source because it cannot afford to live through perpetual tumult. . . . It is and should be proud of a democratic government that it maintains and upholds independent courts of justice where its own laws can be tested. A government writes its own epitaph when it refuses to acknowledge its errors and renders justice to the individual or society against itself." (Justice P. B. Mukherjea).

As no constitution can be perfect, the task of correcting the errors has naturally fallen on our Supreme Court, which is truly the watch-dog and the ultimate expounder of our Constitution and our laws. Through its judgments it has upheld the rights guaranteed by the Constitution. It is true that 90% of the people do not go to the courts for the establishment of their rights but it is necessary that an independent country should be politically conscious, whether it be with regard to the establishment of the rights or the amendment of the Constitution. There is no doubt that the constitution is framed for the benefit of the people only, and therefore it should not be placed above the people. As Lord Sankey aptly puts it, "Amid the cross-currents and shifting sands of public life, the law is like a great rock upon which a man may set his feet and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the law courts at any rate, he can get justice."

In my **ELEMENTS OF CONSTITUTIONAL LAW** I have defined a **constitution** as the framework of government consisting of rules or laws which determine the form of government and the respective rights and duties of it towards its citizens and of the citizens towards their government. We have called the constitution as the fundamental law of the land and there is no doubt that the document which regulates the exercise of sovereign powers, directing to what body or person those powers shall be confined and the manner of their exercise. In short, a constitution defines the limits within which the three organs of state have to work together with

the rights and duties of the subjects and the process of amendment. It is, therefore, a collection of legal and non-legal rules, i.e. of laws, usages, customs and conventions. This is the widest definition we can give of a constitution. It is only when we understand a country's constitution or constitutional law in its wider context that we actually understand the most important part of the constitution. As stated above, theory and practice of government differ considerably and the legal rights and rules contained in the constitution may be modified or even nullified by usages, customs and conventions. It does not mean that the law of the constitution is only for those who govern or for the political theorists, but it is also meant for the bulk of the people for whose benefit, safeguard and pride the constitution has been written. The provisions of the Indian Constitution, therefore are not dull lifeless words, "static and hidebound as in some mummified manuscript but living flames intended to give life to a great nation and order its being, tongues of dynamic fire, potent to mould the future as well as guide the present. The constitution must in my judgment be left elastic enough to meet from time to time the altering conditions of a changing world with its shifting emphasis and differing needs." (Bose J.).

This naturally takes us to another important question as to what should a Constitution contain so as to represent the true political aspirations of the people? It is obvious that no two Constitutions can be identical in contents and length. It all depends on the sentiments of the people. In this connection the remark of Marshall C. J. in *McCulloch v. Maryland* (4, Wheaton 316) merits our attention: "A Constitution to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." In short, a Consti-

tution should contain the very minimum and that minimum should be the rules of law, that is, the ideally best form of Constitution is one which is brief, suitable, practicable and beneficial to the society and no more. . . We have not to judge whether a particular Constitution is better, or simpler or more complicated. It all depends on what people want and expect from the Constitution itself. Mere recitals or enumeration of rights or other facilities will not matter much, but what is required is the actual enjoyment of the same, which depends to a very great extent on the laws of that country.

The ideal Constitution, then, would contain few or even no declaration of rights, for most of the Constitutions give rights with one hand and take them away with the other, though the ideal system of law would define and guarantee as many rights as it is possible to do. Our experience proves that it is no use making long and solemn declarations of rights in a Constitution. If we at all wish to do so, let them be in absolute and unqualified terms, unless they are so qualified as to be meaningless. It is always best and safest to define rights in the ordinary laws which should necessarily be in line with public opinion. It is best to mention the bare statement of the rules which establish the principal political institutions of any state in the **preamble** itself, for it (preamble) is no part of the Constitution and hence no part of the law. Most Constitutions have their preambles, but they all differ in their content, eloquence, emotional appeal, aspirations, directives and policies. The Soviet Constitution dispenses with a preamble. To many writers, a Constitution is something first and foremost, a political manifesto or creed or testament, and it, therefore, evokes great respect and affection of the people in the manner in which no other legal document can ever do. If so, then we have also to consider the **authority** a constitution can claim in order that it may represent for all and act for all.

Most modern Constitutions have tried to follow the American model and the legal and political theory that lies behind it. The people, or a constituent assembly acting on their behalf, has authority to enact a Constitution. This

position is also accepted in law and as early as 1819 Marshall C. J. said in **McCulloch v. Maryland**, "The government proceeds directly from the people; it is 'ordained and established' in the name of the people; . . . . In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit. . . . It is the government of all; its powers are delegated by all; it represents all, and acts for all."

Most Constitutions claim to possess the authority not only of law but of supreme law. That is, the law in a constitution is superior to the enacted law made by law-making body established in a country by the Constitution itself. This should be quite clear to the students of law, and from the very nature of the constitution it must also follow that it has superiority over the institutions which it tries to create. The words of Chief Justice Marshall in **Marbury v. Madison** are very significant when he says, "Certainly all those who have framed written constitutions contemplated them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void." On this basis and argument, if a constitution claims, by its terms to limit the powers of the institutions it creates, including the legislature, its provisions must surely be regarded as of superior force to any rules or actions issuing from those institutions.

The second argument is that the constitution is the product of a body which has power to make supreme law—it may be the external supreme legislature, like the British Parliament, or the people, as in the United States or Ireland, or as in India 'the people enact the Constitution in our Constituent Assembly'. It follows from this that there are occasions when it is right for citizens and even for governments to neglect or ignore or to overthrow and even suspend a Constitution. What those circumstances are will differ from place to place and from time to time, but I may be permitted to make a general remark that a constitution which is com-

pletely unalterable tends to invite and to justify disobedience, for in this dynamic world nothing can be permanent and unalterable. A Constitution which admirably suits the needs of the people at one time may be changed entirely in course of time on account of changed social and economic conditions. Whatever the authority, it is necessary for us to remember that a constitution **must** embody forms of government in which a community believes; it must be adapted to their capacity for government, in short we must establish a constitutional government. The mere fact that a few words have been scribbled upon paper can give them no special claim upon the obedience of the citizens or of the government. Let us therefore discuss what is meant by **constitutional government**.

### **Constitutional Government**

In my **ELEMENTS OF CONSTITUTIONAL LAW** I have shown that every modern government rests upon a constitution. By constitutional government we mean the government of laws and not a government of men. This involves the formulation of the rules or laws which control the actions of government officers. The nature and extent of constitutional government will depend upon the contents of constitution. Further, a constitutional government is not necessarily a democratic government, but no government can be democratic if it has no broad-based constitution. "The genius of a race is embodied in its Constitution. It contains in itself the formulated past and is designed to meet the present needs and it simultaneously also embraces the unfolding future." (G. N. Joshi). The constitution of a country is, therefore, a very important document for the wellbeing of its citizens. Aristotle has rightly said, "The Constitution is a life or the imitation of a life."

### **Constitutional Law—its definition**

The question is, **how do we define "Constitutional Law?"** Dicey defines it as "that **branch of civil law** which deals with the rules directly or indirectly affecting either the exercise or the distribution of the **Sovereign Power** in the State,



It embodies rules which prescribe the structure and the main functions of the different organs of any government. Constitutional laws, therefore, mean in England, laws which effect the fundamental institutions of the State." According to Hood Phillips, "Constitutional law is that system of law, customs and conventions which defines the composition and powers of the organs of the state and regulates the relations of the various state organs to one another and to the private citizens." According to Dicey constitutional law gives the location, distribution and function of sovereignty, which ultimately lies in the people. But Hood Phillips gives a more comprehensive definition when he says that mere rules or laws cannot regulate the relations of the various state organs but they should be regulated in environment, in customs and conventions. He thus gives us the complete composition of the organs of the state and ultimately the idea of citizenship. It is according to the nature of constitutional law that other laws are made, and it is from this point of view that we have to treat constitutional law on a different footing as compared to other laws. In fact it is the touchstone of other laws because the form of constitution will determine to a very great extent the nature of laws. (For further discussion please refer to my ELEMENTS OF CONSTITUTIONAL LAW).

From the above it follows that law of the constitution may be written or it may be unwritten. It means that **some of the written rules together with the conventions of the constitution together constitute the constitutional law of a country.** It follows that the subjects that can be covered by constitutional law are many and varied. Among these may be mentioned the status and the mode of choosing the head of the State, (he may be a president, a monarch or a dictator), the nature of the law-making assembly, and its relations with the head of the state; the relations between the Church and the State and the relations between the Central and the local governments. It also lays down the relations which determine as to who may be considered as members of a State together with their liabilities. It is for this reason

that the law of the constitution is endowed with a higher status as compared to the other legal rules in the system of government. Hence the amendment of the constitution can always take place through a special procedure which is quite different from the procedure laid down for passing ordinary laws.

### Conventions of the Constitution

**The Meaning and the Nature of Constitutional Conventions:** Constitutional conventions play a very important role in all constitutions. They are the rules of political practice which are regarded as binding by those to whom they apply, but which are not laws as the Courts would not enforce them, in case they are brought before them. There is no direct legal sanction for their breach. These rules are referred to by Mill as 'the unwritten maxims of the constitution,' while Anson calls them 'the custom of the constitution,' and Dicey, 'the conventions of the constitution' or 'constitutional morality.' To the modern writer the above phrases are not exact for the purposes of expressing what is actually meant. The word 'convention' may indicate some form of agreement, while the word 'custom' may indicate that the law enforced in the courts need be customary. It is only Dicey's phrase that correctly expresses the nature of some of the modern conventions, particularly those relating to the Dominions.

The conventions of the Constitution are, therefore, customs or understandings as to the mode in which several members of the Sovereign Legislative body should each exercise **discretionary authority**, whether we term it as the prerogatives of the **Crown or the privileges of the Parliament**. It is therefore necessary for us to understand by **conventions of the Constitution** as rules or customs determining the mode in which discretionary power of the Executive is to be employed.

**The raison d'être of (need for) conventions:** "Political Institutions are the work of men; owe their origin and their whole existence to human will....In every stage of their existence they are made what they are by voluntary human

agency." (J. S. Mill quoted by Jennings). Conventions are a part and parcel of almost all the constitutions of the world. In a dynamic world a written constitution cannot satisfy the hopes and desires of all the people. Within the framework of the law there is sufficient room for development of rules of practice, which may be followed as effectively as rules of law which men follow. "The short explanation of the constitutional conventions is that they provide the flesh which clothes the dry bones of the laws; they make legal constitutions work; they keep it in touch with the growth of ideas. A constitution does not work by itself; it has to be worked by men. It is an instrument of national co-operation and the spirit of co-operation is as necessary as the instrument. The constitutional conventions are the rules elaborated for affecting that co-operation. Also, effects of constitution must change with the changing circumstances of national life. New needs demand a new emphasis and a new orientation even when the law remains fixed. Men have to work the old law in order to satisfy the new needs. Constitutional conventions are the rules which they elaborate." (Jennings). Laws have normally the tendency of lagging behind the changed and changing social needs and the conventions fill in the gap of bringing the constitution in tune with the aspirations of the people in a dynamic society. This rule applies equally both to the written as well as the unwritten constitutions.

Legal rules are fixed and rigid. The laws of the constitution could stand alone, though the constitution would then become static, but conventions would be meaningless without their legal context. Even the constitutional convention is closely related to some law or laws which it implies. These conventions enable the deadlocks and frictions between different departments to be solved peacefully without disturbing the political fabric of the country. According to Sir William Holdsworth, "Conventions must grow up at all times and in all places where the powers of Government are vested in different persons or body where in other words there is a mixed constitution." It follows that conventional

rules spring up to regulate the working of the various parts of the constitution and the relation with one another. They determine the manner in which rules of law are applied so that in fact they become the motive power of the constitution. Secondly, these conventions are directed to see that the constitution works in practice in accordance with the prevailing constitutional theory of the time.

From the above, it follows that conventions and usages nullify some of the provisions of the constitution. It does not merely amend or abolish the law, but as Wheare puts it, "It does not amputate the limb; it merely makes it useless." Further, usages and conventions not only change the constitution but they even supplement the constitution itself by giving a new meaning to the old provisions. As a matter of fact the conventions and the constitution operate upon each other and neither can be effective without the other. In modern constitutions, matters which are governed substantially by usages and conventions are enacted as a part of the constitution. India also adopted many of the usages and conventions prevalent in other countries, e.g. Arts. 74 and 75, the provisions making it incumbent on the President to accept the advice of his ministers. All these are left to be governed by Conventions. Conventions are accepted and followed not as a matter of individual fancy but essentially as a matter of expediency because they are good and essential for the working of the constitution. **Conventions, therefore, sometimes transfer powers granted in a constitution from one person to another.** There is no question of nullifying the legal power so granted it is only a question as to who exercises the legal power so granted by the constitution—whether it is the President or the Prime Minister. **Judicial decisions also codify some of the conventions, for the Courts have the power to recognise customs under certain conditions as part of the law, and this practice has also been followed with regard to the constitutional law.**

**Conventions provide flexibility to the constitution.** They bring the changes without violence, they link the gaps in the

legal institutions of government. But at the same time they have their own limitations because they cannot accomplish everything that a constitution can do. Prof. Wheare rightly remarks, "They may postpone and alleviate but they cannot finally obviate difficulties which only formal amendment or judicial interpretation are competent to deal."

### Federal and Unitary Constitutions

"A 'federal constitution' is a political contrivance to reconcile national unity and power with the maintenance of State rights." (Dicey). Under this the rights of the Federal and the federating units are properly defined. Division of power, supremacy of the constitution, an independent judiciary to interpret the constitution are some of the essential characteristics of a federal constitution. From this it follows that a federal constitution must be a written constitution embodying all the above provisions. Further, in a federation, the powers of government are distributed between the Central government and the State governments in such a way that each is legally independent within its own sphere. There is usually a dual citizenship with a dual judiciary, though India has not adopted this pattern. According to Dicey, federation produces conservatism and, is, therefore, a weak government. It is the rigidity of the federal constitution that makes it weak because it cannot bend itself very easily. The doctrine of separation of powers creates checks and balances and this considerably weakens the federal state.

In a unitary constitution the legislature of the whole country is the supreme law-making body in that country and all other legislatures are subordinate to this legislature. In times of crisis it can gear itself up with speed and concentration of power which may not be possible in a federal constitution. The constitutions of the United States, Switzerland and Australia are examples of federal constitutions while those of England, New Zealand, France, Sweden and Norway, are examples of unitary constitutions. In between these two

constitutions we may have a quasi-federal constitution which is federal in form but may become unitary in practice, while a constitution which is unitary in form may almost become federal in actual working. The constitutions of India and U.S.S.R. are described as federal, yet the former in times of crisis can become unitary, while the latter by conferring large and extensive powers on the Central government over the constituent units is almost unitary with decentralised features.

**The Indian constitution is unique** because it reconciles national unity and power with the maintenance of state rights, preserves the supremacy of the constitution by avoiding some of the weaknesses of a federal government. It is unique because it establishes an integrated judiciary and single citizenship. Hence it may be called a quasi-federal constitution though there are many federal features incorporated in the constitution. Our constitution is written and protected by the authority of an independent judiciary. To the Centre it assigns a larger field of authority both in the legislative and executive fields. The Centre has the power of over-riding the States, the Governors of the States are appointed by the President and the President has the veto power in relation to Bills passed by State Legislatures. Our Constitution may, therefore, be called a ~~cross~~ <sup>cross</sup> between the Parliamentary and the Cabinet systems of the United Kingdom together with the Presidential or the non-parliamentary form of executive as in the United States. The Ministry is the real executive because the President as the head of the State is expected to follow the advice of his Ministry. Hence, under our Constitution, the executive and the legislature are not as independent as they are under the American Constitution. The President has no separate Cabinet as the President of America. We may, therefore, conclude that the Indian Constitution has adopted some of the best features of the different modern constitutions by establishing a unitary state with subsidiary federal features, rather than a federal state with subsidiary unitary features. In structure it is federal, in essence it is unitary.

## India and the British Commonwealth

In 1947, India became a sovereign republic and the question was asked whether India could remain within the framework of the British Commonwealth of Nations. Our Prime Minister is of the opinion that in the present context of things it is most desirable to continue this association with the Commonwealth because the Commonwealth is a dynamic concept and it has adopted itself to the changing political complexion of the world.

In 1947 India became a Sovereign Republic as also a full fledged member of the British Commonwealth of Nations. The dawn of independence and the framing of our Constitution raised grave doubts in the minds of many whether the Republic of India could easily adjust itself into the framework of the British Commonwealth of Nations. At the 1949 Conference of the Prime Ministers of the Commonwealth it was pointed out that just as the member States of the U.N.O. are completely sovereign and find it possible to recognise certain organisational authorities for the purpose of working together so also the members of the Commonwealth, without impairing their sovereignty or independence in any way can recognise the Crown as the symbol of the Commonwealth Association. The Crown would not be the symbol of subordination. In accepting this situation India declared her willingness to remain within the Commonwealth and this in no way involved any kind of allegiance to the Crown. The Queen was accepted as the symbol of the free association of independent member nations and as much as the head of the Commonwealth. The joint declaration of 20th April, 1949 runs as follows:

"The U.K., Canada, Australia, New Zealand, South Africa, India, Pakistan, Ceylon hereby declare that they remain united as full and equal members of the Commonwealth of Nations freely co-operating in the pursuit of peace, liberty and progress."

Interpreting this declaration Pandit Nehru said, "alliances normally mean mutual commitments. The wording



Association of Sovereign Commonwealth of Nations does not involve such commitments. Its very strength lies in its flexibility and its complete freedom. It is well known that it is open to any member of the Nations to go out of the Commonwealth if it so chooses."

Very recently, Pandit Nehru replying to the criticism of the members of the Rajya Sabha, said. "I feel that it is right for us to continue our association with the Commonwealth for a variety of reasons, among them being primarily that our policies, as it is obviously, are in no way conditioned or deflected from the normal course by that Association. Secondly, at this moment, when there are so many disruptive tendencies in the world, it is better to retain every kind of association which is not positively harmful to us than to break it. I would again remind the House that the Commonwealth itself is undergoing a change. Ghana is a member of the Commonwealth and Malaya will very soon (31st August, 1957) join as a new member. The inner composition and contents of the Commonwealth is changing and changing in the right direction. Therefore keeping all these things in view and while realising the strong reactions that have been produced in the country, I would still respectfully submit to the House that it is desirable in the present context to continue this association with the Commonwealth."

As the Commonwealth is a dynamic concept and it has adopted itself to the changes in the political complexion of constituent members, the continuance of India in the British Commonwealth does not in any way affect her Sovereign Republican status.



# **Development of the Consitution**

**1956—1957**

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## CHAPTER 1

### SOME ASPECTS OF THE INDIAN CONSTITUTION

The constitution of India is the supreme and fundamental law of the land, which consists of a framework which provides for the Executive, Legislative and Judicial organs for the Union Government and the States. The constitution being federal has distribution of powers. In short, it contains fundamental rules of governance of the Union and the States.

In structure it is federal, but considerably modified to meet the peculiar conditions and needs of India. For this purpose, it contains a detailed distribution of powers, a strong and an independent judiciary, a comprehensive declaration of fundamental rights, establishment of parliamentary executive at the Union and States, and provides for reasonable and flexible amendments to the Constitution. It is therefore quasi-federal, having emphasis on national unity. The source of the Constitution is the people. It is an instrument adopted by people for the governance of the country and unlike other constitutions, it is adopted not merely to serve as an instrument of governance but also to strengthen the nation on the principles of economic and social equality. It is a product of our history and best suited to the needs of our country. It is, further, the longest, the most detailed and complex constitution in the world, which to a large extent reflects the anxiety of our constitution-makers. It is the result of the peaceful transfer of power and hence its salient features are influenced by its past history.

The basic structure of the constitution is the same as the Government of India Act, 1935, which introduced federal polity in India. But the 1935 constitution was not a product of the political aims of Indians but was only adopted to suit the needs of the British rulers. Our constitution-makers, in spite of themselves, took the basic structure of 1935 because they were haunted by the ghost of that Constitution, which contains the Consti-

tution not of the Union but of the States. To this was added a detailed provision of fundamental rights emphasised by the Congress and the Cabinet Mission. Hence it is federal in nature but in practice it is unitary. It is indeed true that the Constitution should be short and simple and intended to endure for generations to come. It was the greatest experience for a country which was once governed by autocratic rulers and our constitution-makers were therefore anxious to create the necessary conditions which would truly usher in an era of democracy.

In structure, as we have seen, it is actually quasi-federal and of the Canadian pattern. It is a direct result of political history of India and the polity of 1935 which was an artificial creation, as British India was governed on a unitary basis. Historically, therefore, there was no basis for federalism. It was deliberately created because the truth is that historical urge and need for federalism were absent. In 1935, the different Provinces derived power from the Centre and in 1950 the position was the same and hence the States had to accept the Constitution. It is, therefore, neither federal nor unitary, but it is Indian Federation plain and simple. They adopted the unitary constitution to meet with the felt needs of India and therefore tried to modify the federal structure. It is true that forms and ideals of the Act of 1919, of the Provincial autonomy, and of the Act of 1935, dominated the minds of *our* constitution-makers. But it is a moot point whether India could have avoided a federal constitution as the main characteristics of federalism are present but in modified forms to suit the conditions prevailing in India. The usual independent federated structure is not in our constitution, as there is no list of federated powers. All those powers not acceded to the Union, come to the State. In America and Australia they have one federal list containing federal powers. In Canada, the residuary powers of the state are in the federal constitution, as given under Sections 90 and 91 of the Canadian Constitution. In India we have the enumerated and residuary powers. The enumeration is the longest and most exhaustive in the world. We have three exhaustive lists—a phenomenon quite novel and unknown to the other constitutions of the world. But this was necessitated by the fact that these lists were found in the Gov-

ernment of India Act, 1935, wherein there is distribution of the executive powers as between the Union and the States.

Some of the conventions of the British constitution have also been embodied in our constitution. There is no rigid separation of powers between the Legislature and the Executive. But the theory of the Separation of Powers has been recognised in the separation of the Judiciary from the other two arms of the State. In the States, we have the High Courts, whose decisions can only be overruled by the Supreme Court, against whose decisions no appeal lies. In the United States, there are two sets of courts—Federal and State Courts. In Canada, there is little distinction between Federal and State courts as all the Judges are appointed by the Federal Government. In Australia we have two sets of courts but in India we have no such dual jurisdiction of courts. Thus the polity is federal yet the Judiciary is autonomous and independent.

The Lower House (Lok Sabha) has representatives from various states depending upon the population. As regards the Upper House (Rajya Sabha), we find that in America and in Australia the same number of representatives are sent irrespective of the size and the population of the State. In India this principle is not followed as elections are held on the population basis of each state.

The Indian constitution is less rigid and reasonably flexible and contains seeds of growth, unity, and important devices.

The States are constituent units and in making special provisions, we have taken our cue from the Canadian and Australian constitutions. For our fundamental rights, our inspiration is from the United States, and the United Kingdom. It follows therefore that our constitution contains all the features of the federal and Parliamentary form of Government, with an elaborate system of fundamental rights, at the same time establishing a government regulated by law. The framers have placed tremendous faith in Judicial reviews for the interpretation of the constitution, which is quite significant. Matters under Articles. 32, 132, 134, and 136 are dealt with by the Supreme Court, and Articles, 226 and 227 are meant for the High Courts. There is no

constitution in the world which empowers the judiciary with such tremendous and extensive powers. With regard to the matters like the amendment of the constitution, distribution of powers, fundamental rights, provision for emergency etc., the framers have drawn heavily from the experiences of other countries, at the same time, not ignoring the needs of India and the welfare of the people. According to Sir E. Barker, "The Indian Constitution embodies the ideals of political philosophy of a modern welfare state." The constitution aims at establishing democracy, rule of Law, with a view to enable the citizens to develop their personalities. Justice, liberty, fraternity, and national equality are objectives sought to be achieved through the constitution.

Part IV, is taken from the Irish constitution. The basic principles of social and economic welfare of the country are in the nature of moral precepts which are not justiciable, but are at the same time fundamental for the governance of the country. These Directive Principles are mere ideals, and general duties of the States are laid down in Article 38, which are quite elaborate, but certain other principles are also laid down for the States to follow. These directives, create hopes in the minds of the people. The State exists to secure good of the people and hence the need for these Directive Principles.

### **The Federal Principle in the Constitution**

One of the requisites of a federal government is national unity. We find cases where Nationalism is too weak, federalism may be established, but people of different nationalities cannot form a federal union unless they are prepared to accept a government in which those who differ from them in nationality are given some share. In many cases, too, some nationalities must expect that, though they may have their own way in their own state or province of the federation, they will be in a minority in the Government of the whole federation. A federal union usually implies, that those who join it, will expect or be expected to develop some common nationality in addition to their distinct nationalities. When people of different nationalities are unwilling to accept these consequences, federal union cannot be formed

to fit their case. We have had many examples of this in history. When, India approached self-government, it was hoped that a federation could be formed in which Hindus, who formed the majority of the population would be associated with the Moslem minority, because in some states, the Moslems had a majority, chiefly in the Northwest and Northeast of India, wherein the Hindus would be in a minority. In spite of this union the cultures of the two people could be preserved and yet reconciled with a United India and an Indian nationalism. But in 1940, the Moslem League declared that Moslems were a separate nation and that they must be accorded a separate existence with a separate government and this would consist of those areas of India in which the Moslems had a majority. So, in 1947, when self-government came, it was partition and not federation which occurred, and two new States, India and Pakistan were created. We may say that federalism is almost irrelevant to nationalism as strong as that.

Even if the federal pattern is chosen, the emphasis in applying it may be to minimise certain differences by disregarding them. India's policy on linguistic boundaries has afforded a case study in the problem of national integration. In drafting the 1949 constitution, it was decided that any reshaping of provincial boundaries along linguistic lines should be viewed coldly and should at least wait until a later time. The preparatory commission that dealt with this issue declared that the "first and last need of India at present time is that it should be made a nation." It argued that an attempt to reorganise in terms of the various languages "would set the ball rolling for the disintegration of the entire country." Despite this decision, India in 1953, was forced to create the new state of Andhra, an entity of twenty million people born from Telugu speaking areas in Madras. This step was reluctantly taken at the cost of risking future defeat for the Congress Party in Andhra and was attended by a further concession in the promise that the government would give early attention to other linguistic claims which the government did by establishing the States' Reorganisation Commission, on the recommendations of which India is going to be reorganised linguistically, and her boundaries reshaped from November, 1956.

The Constitution of India which came into force on January 26, 1950, established a Union of States, organised out of the provinces of British India and the Indian States, and operating at the Centre and in the States, with certain exceptions, the system of cabinet government on the same lines as it exists in Canada. Like Canada, in Indian constitution, too, or much more so, the unitary elements have been modified, and the central government is given powers of intervention in the conduct of the affairs of state governments which considerably modifies the federal principle. (Refer Articles 249, 352, -60, 371). The constitution does not claim to establish a federal union, but only envisages the federal principle to be incorporated in its terms to such an extent that we would be justified in calling it a quasi-federal Constitution. The reasons for this conclusion is that the test for a federal government is : 'Does a system of government embody predominantly a division of powers between general and regional authorities, each of which is coordinate in its own sphere with the others, and independent of them?' If so, that government is federal. What determines the issue is the working of the system and hence the distinction between federal constitutions and federal governments as drawn by Wheare. He has thought it expedient to find a name for those constitutions or governments in which the federal principle though not predominant is none the less important and these he calls quasi-federal constitutions and quasi-federal governments. The examples of federal governments are the United States, Switzerland, Canada and Australia.

### **The Process of Amendment**

The process of amendment as embodied in the constitution reflects the attitude of the people towards the constitution. *Our* constitution is classified as flexible. This is essential because as a result of forces of a dynamic society such adjustments of powers are necessary and a method has been provided for the amendment of the constitution to meet with the growing and changing needs of the country. This change can be affected by a special mode and not by ordinary process of legislation, hence it is rigid and difficult to amend. This is with a view to securing

permanance and stability and yet to make it flexible enough to meet with the changing needs of the country. For this purpose we have drawn enough from the constitutions of the world. It has been pointed out that constitutions reflect the politics of the day but no constitution can meet with all the needs for all the times and hence the necessity of such a clause. The State has no power to amend the constitution and it is Parliament only which can do so by a prescribed method as laid down in the constitution under Article 368.

The constitution provides for four modes of amendment, which is a distinct improvement over all other constitutions. Articles 1, 2 and 3, can be amended by a simple majority. The President has to assert the wishes of the legislature and hence anything under these articles is not deemed as an amendment, which is the most novel feature of the Indian Constitution. It is a very significant provision and against the basic principle of federalism. In case of other articles, only certain provisions can be altered by ordinary process of simple majority. The real clause dealing with amendment of Constitution is article 368 which is in conformity with the federal principle.

Taking the procedure of amendment as a whole, it is simple and reasonably flexible with different degrees of rigidity attached to different articles according to their importance, which is in keeping with the latest development in federalism. The remarks of Sir Ivor Jennings that our Constitution is rigid because in addition to a somewhat complicated process of amendment, it is so detailed and covers so vast a field of law that the problem of constitutional validity must often arise. This criticism is untenable because being federal it must be rigid. It has to obtain the unity of Union and maintain the integrity of the States too. It should therefore not be liable to easy changes. Within six years of its existence, the Constitution has been amended ten times. To make the Constitution more flexible or elastic or in the words of Sir Jennings that the Indian Constitution ought to be changed every morning, like underclothes in a Madras climate, is to endanger its stability, and to make it a subject of constant change, is not very healthy and desirable. At the same



time the process of amendment should not be very rigid. In our Constitution we have a compromise between the two.

It has been ascertained by few writers that our Constitution contains far too many articles which are not constitutional and hence difficult to amend and are likely to impede the growth of India. But as against this we have the extensive power of the judiciary and hence it is needless to press this point too far.

According to Basu the Indian Constitution is partly rigid and partly flexible. An unwritten Constitution like that of England can be changed like any ordinary law of the land by the Parliament. This is because so little of it is expressed in law at all. The principles of Constitutional monarchy and Cabinet Government, the relations between the Cabinet and Parliament, the relations between Ministers and public servants, are all regulated by conventions, which automatically adopt themselves to changing conditions as they arise. But in case of a written Constitution, which is the fundamental law of the land it has a special sanctity and cannot, in its very nature be altered like the ordinary laws of the land. The experiences of the U.S.A., and Australia have clearly shown that too much rigidity in the process of amendment makes the Constitution unresponsive to the changing needs of the times. At the same time the Constitution should not be allowed to be amended lightly. Our constitution-makers were faced with the problem of devising a process of amendment which would secure not only comparative stability within the federal provisions of the Constitution, but at the same time would adopt itself to the changing needs of a dynamic society. In America, the Judiciary by the process of judicial interpretation tried to introduce changes in the Constitution. But this method is slow and unsuited to a dynamic society.

The federal provisions of our Constitution are subject to extra-ordinary procedure because their amendment will require special majority in Parliament but also ratification by at least one half of the Legislatures of the States (Art. 368). But even here our method is more flexible than the American Constitution, under which ratification by three-fourths of the States is required, while the Irish and Australian Constitutions provide for a referendum.

Flexibility can be noticed in our Constitution from the following points:—

- (a) No provision of the Constitution is unalterable.
- (b) Arts. 37(2); 75(6); 97; 195(2); 148(2); show that there are many provisions of a transitional nature which remain in force only until 'Parliament otherwise provides'. This amendment process according to Prof. Wheare is wise but is rarely found.
- (c) There are other provisions as contained in Arts. 4, 169, 240 which may be altered in the ordinary process of legislation and by a simple majority in Parliament. They are amendments no doubt but "not deemed to be amendments of the Constitutions". These may include alterations of boundaries and formation of new States.
- (d) Art. 368 provides that the rest of the Constitution can be amended according to the ordinary procedure laid down with the additional requirement of a special majority of two-thirds of the members present and voting in each of the two Houses of Parliament. Even our fundamental rights contained in Part III of our Constitution can be amended in this way.

### **Brief Exposition of the Indian Constitution**

The British East India Company which was established by a Royal Charter in 1599 was a trading concern and it took them a century and a half to make territorial conquests in this country. For one hundred years, that is, from 1757 to 1857 the task of the British East India Co. was the conquest and establishment of peace and order in this country. During this period a few social reforms were introduced, but from the constitutional point of view, the British administrators had the full power in their hands and they acted autocratically in all matters and points of decision. Several representations were made by the Indians, not only to the British administrators in India but even to the British Parliament, to give Indians some share in the day-to-day administration of the country. The year 1857 witnessed the transfer of

power from the British East India Company to the hands of British Parliament. From that date India was governed from a distance of 6,000 miles and from 1857 to 1947, we have the rule of British Parliament in India. From 1857 to 1892 the British administrators were busy introducing many reforms particularly the reform of the judicial system by codifying the Indian law. The year 1892 is an important land mark in the political and constitutional development of British India. In 1855, the Indian National Congress was established in Bombay and from that day our relations with the British rulers were strained. Before 1892, there was the gradual establishment of British power and of ordered government; the period from 1892 to 1947 is the period of struggle for gaining self-government.

From the Indian Constitution point of view the period before 1892 is not of very great importance.

### **After 1892**

We have described the period from 1892 to 1947 as the period of growth and realisation of self-government. The educated middle class intellectuals were moved by a higher motive when they organised and led the nationalist movement in India. The new education which they imbibed in schools and colleges established by the British brought them the knowledge of democratic thoughts of modern Europe and also of the nationalist struggles for freedom which took place in different countries, particularly after the American war of Independence. Works of Paine, Spencer, Burke, Mill, Voltaire Mazzini, and other writers, who preached the doctrine of individual and national liberty, influenced Indian educated masses to a very great extent. Further the period between 1870 and 1885 witnessed a steady growth of a nationalist press and literature which reflected the growing discontent among the people. Works of foreign authors were translated into vernaculars. This increased the political and economic discontent of the people to a very great extent and particularly after 1870, almost threatened to reach an explosive point by 1873. The ill-conceived measures of reaction of Lord Lytton's government, combined with the Russian methods of police repression, brought India within measur-

able distance of a revolutionary outbreak. It was the timely effort of one Mr. Hume and his Indian advisers who were inspired to interfere. Mr. Hume realised that there was a need of some organisation which would serve as a link between the British administrators on one side and the Indian masses on the other. The Indian National Congress established in 1885 was designed as a safety valve for revolutionary discontent, a safety valve for the escape of great and growing forces, generated by the actions of the British administrators, saved the situation.

The Indian National Congress held its first meeting in 1885 in Bombay and enumerated the principal objects of the Congress as (1) the development of close relations between national workers; (2) the dissolution of race, creed and provincial prejudices among all lovers of the country and further development and consolidation of the feeling of national unity among them; (3) the recording of the conclusions on vital Indian problems reached by educated Indians after earnest discussions of these problems; and (4) outlining of the programme of work for the next year. They also demanded *inter alia* the presence of elected members in the Legislative Council, the right to discuss the Budget and ask questions. On a reference to the Standing Committee of the House of Commons on issues between the Councils and the Government, Mr. Bradlaugh introduced in the House of Commons a Home Rule Bill for India, at the request of the Congress. Some of the demands took shape in an Act of 1892, which recognised, but only indirectly and inadequately, the principle of election to both the central and local Legislatures. The demand for the Indianisation of the Services was made and gradually conceded. The Congress passed resolutions formulating for the first time such demands like the abolition of the India Council, simultaneous examinations for the I.C.S. and raising the age of candidates, admission of elected members to existing legislative councils, and creation of councils in the N.W.F.P., Oudh and the Punjab.

The Indian Liberals had unlimited faith in the British democracy and considered the British rule in India as providentially brought about and designed to lift India to a high plane of free, progressive, democratic, national existence. "The rationale of

British rule in India is its capacity and providential purpose of fostering the political education of the country on the largest scale in civil and public activities," said Justice Ranade. The Indian Liberals looked to Britain for guiding the Indian people to overcome their social and cultural backwardness and for training them in the art of representative government. "To England we look for inspiration and guidance.... From England must come the crowning mandate which will enfranchise our peoples. England is our political guide. We have great confidence in the justice and generosity of the English people. We have abounding faith in the liberty-loving instincts of the greatest representative assembly in the world, the British House of Commons, the Mother of Parliaments, where sits enthroned the newly enfranchised democracy of those islands." (Surendranath Bannerjee in 1895).

The Congress under the leadership of the Indian Liberals like Dadabhai Nowroji, Bannerjee, Ranade and Gokhale, from 1885 to 1905 fought for administrative reforms such as the separation of the judiciary from the executive, the rights of the Indians to be admitted to public services, for rescinding of the Arms Act, against the economic drain which engendered poverty of the Indian people and the heavy military expenditure.

The methods of constitutional agitation adopted by the Liberals through the Indian National Congress, together with highly emotional appeals to the democratic conscience of the British people, hardly secured anything for the Indians. The situation in 1918 remained the same as it was in 1892. Most of the demands embodied in various Congress resolutions remained unfulfilled till 1918. Even the constitutional agitation organised by the Congress for such a mild demand as administrative reforms, the freedom of the press, were viewed with great disfavour by the British Government. Instead of meeting the demands, the government enacted Section 124(A) and 153(A) of the I.P.C. in 1897 to combat Congress activities. It was in 1900 that Lord Curzon wrote to the Secretary of State in England : "The Congress is tottering to its fall, and one of my great ambitions while in India is to assist it to a peaceful demise."

The non-fulfilment of the most important demands even within the system of British rule, and the repressive policy followed by British Viceroys, brought about great disillusionment among the Indian leaders and masses. Even so great a believer in fairness of the British rulers like S. Bannerjee remarked that "the history of the Civil Services is one unbroken record of broken promises." The growth of an unsympathetic and illiberal spirit in the bureaucracy towards the new born hopes and ideals of the Indian people was a serious blow to the hopes and aspirations of the people. Political disillusionment spread in the country and coupled with disastrous famines which swept over the country at the close of the century resulting in great economic distress, brought the people on the verge of a revolution. This was further accentuated by the high-handed policy of Lord Curzon. Unemployment among the educated youths, brought about further difficulties for the rulers. The defeat of Russia by Japan in 1905 and that of Italy exploded the belief in the invincibility of the white race. The Indians began to shed their inferiority complex and felt confident of doing away with the British rule in India.

It was in this period of turmoil and disillusionment, that the Morley-Minto Reforms of 1909 were passed which marked the next important landmark in the constitutional history of India. These Reforms increased the representative element in the Legislative Councils and extended its powers, but in no way this was a new policy or a new departure. These Reforms were essentially evolutionary in character; the change they introduced was one of degree and not of kind, the object being to associate the people with the Government in the decision of public questions to a greater extent than before. The Reforms introduced by the Act of 1909 were not in any way a step towards parliamentary government. It only tried to meet the political demands of the Congress half-way and hence the Congress welcomed the Reforms and Gokhale spoke of their 'generous and fair nature.'

The fatal weakness of these Reforms were soon visible and instead of co-operation they introduced an element of challenge and of obstruction, that is influence without responsibility. The Great War of 1914-18 gave an opportunity for India to show her

loyalty and co-operation inspite of ill-treatment by the British Rules. These supreme qualities of loyalty and co-operation at once impressed the Members of the British Parliament and on August 20, 1917, an announcement was made in Parliament to the effect that the British Government desired to grant self-government to India gradually so that India could realise independence in due course. The Reforms that followed this announcement embodied the principle of the British Policy in India, viz., progressive realisation of responsible government.

The Act of 1918 introduced several changes in the Constitution of India, as regards both, the central and the provincial governments. The central Legislature was made bicameral; in both the chambers—the Council of State and the Legislative Assembly—there was majority of elected members. Additional powers were granted to Indians to influence and criticise the Government. In the Provinces the system of dyarchy was introduced. Its essence is a division of the Executive into the Reserved-Half and the Transferred-Half, the former responsible through the Secretary of State for India, to the British Parliament and the latter to the electorate for the administration of certain matters of government. The latter was made responsible through the Legislative Council, to an Indian electorate for the administration of certain other subjects. Dyarchy was worked in different Provinces until 1937, with different degrees of success.

The main criticism of this aspect of the Reforms was that the subjects of most vital importance were kept 'reserved' and even with regard to 'transferred' subjects for which they needed finance, it was outside the control of the Ministers. The Report, therefore, did not meet the demands of the Congress and even of the Moslem League. The Indian leaders were therefore forced to embody in the Congress-League Scheme such principles like self-determination of India and the immediate grant of self-government.

Considerable discontent had grown among the Indian people following upon the financial burdens of the War, the rising prices and profiteering, all of which led to great economic distress among the Indian masses. The post-war revolutions in Ger-

many, Austria and Russia which led to the overthrow of power-dynasties had a galvanising effect on the minds of the Asiatic peoples.

The growing discontent in the country forced the British rulers to appoint the Indian Statutory Commission in 1927 to make a new Constitution for India. The Commission submitted its report in 1930. After that, three Round Table Conferences were summoned at London in 1930, 1931, and 1932, to discuss proposals for the making of the new constitution. In 1933 a White Paper was issued laying down definite proposals for reform, which were submitted to a joint select committee of Parliament for examination and report. The Report of this Committee was made the basis of the Government of India Act, 1935.

### **Government of India Act, 1935**

The Act was brought into operation in the Provinces in 1937 because negotiations were in progress to secure the willingness of States for inaugurating the Federation of India, which was contemplated in the Act of 1935. But before anything could be done War broke out in 1939. Indian leaders refused to make India a party to the War without her consent; popular ministries resigned in eight Provinces; the Moslems took the opportunity of demanding a separate Moslem State, in the event of independence being granted to India. The entry of Japan in the War and her conquests on the borders of India, particularly in Malaya and Burma, which led to the fear of a Japanese invasion of India in the early days of 1942. To secure the willing and active co-operation of India, the British Cabinet sent late Sir S. Cripps to India with fresh proposals for the governance of the country. Negotiations failed and a 'Quit India' Resolution was passed by the Congress in 1942 at Bombay. The Resolution demanded complete independence; while the Moslem League agitated for a separate sovereign State. After the close of the war in 1945, fresh elections were held in 1946 from which it was evident that the demand of the Moslem League for a separate Moslem sovereign State had the support from the majority of the Moslems in those parts where they had a clear majority.



Under these circumstances the Labour Government sent a Cabinet Delegation to India in March 1946 with the Secretary of State for India, to settle the Indian constitutional problem and to use 'their utmost endeavours to help her to attain her freedom as speedily and fully as possible.' On May 16, the Mission put forward the following proposals with the full approval of His Majesty's Government

- (1) There should be a Union of India embracing both British India and the States; which would deal with the following subjects; Foreign affairs, Defence and Communications; and should have the powers necessary to raise finances required for the above subjects.
- (2) The Union should have an Executive and a Legislature constituted from British Indian and States representatives.
- (3) All subjects other than the Union subjects and all residuary powers should vest in the provinces.
- (4) Provinces should be free to form Groups with the Executive and Legislatures, and each Group could determine the provincial subjects to be taken in common.
- (5) To work out a Constitution on the basis of these broad principles, the Viceroy should summon a Constituent Assembly at New Delhi consisting of representatives of British India elected by the members of the Provincial Legislatures in such a way that as nearly as possible for each one million of the population there should be one representative and the proportion between the representatives of the main communities would be on the same basis. Representatives from the Indian States would join the Assembly later.
- (6) There should be a special Advisory Committee consisting of all important subjects including minorities to formulate fundamental and minority rights and to recommend their inclusion in the Union Group and provincial constitutions.
- (7) During the making of the Constitution, the administration would be carried on by an interim Government having the support of the major political parties. It would be a purely Indian government except for its head, the Governor-General.

The proposals seemed for a time to find favour with the main political parties, but differences of opinion soon manifested themselves over the interpretation of some of the clauses of the proposals as a result of which they were dropped.

In the meantime a Constituent Assembly of the kind proposed by the Cabinet Mission was elected and the first session was held on 9th December 1946, the Moslem League boycotting it. When it dawned on the Indian leaders that in spite of their best efforts partition of India seemed inevitable, the British Government on June 3, 1947, made a statement providing for the partition of India in case the voters in some of the districts where the Moslems had a clear majority would vote for the partition. The vote taken was in favour of partition and accordingly India was divided into two independent States, India (or Bharat) and Pakistan. The final transfer of power took place with effect from August 15, 1947. The legal basis of this transfer of power is the Indian Independence Act, passed on July 18, 1947, by the British Parliament, which declared two independent dominions to be set up in India, to be known respectively as India and Pakistan; demarcated the territories of the two Dominions and provided for the determination of the boundaries of the Provinces of Bengal, the Punjab and some of the disputed areas in Assam by a Boundary Commission. With regard to about 600 Indian States, the British Parliament made a declaration that the treaties, agreements and usage in force would lapse from August 15, 1947, making them legally independent and allowing them to decide whether to maintain their independence or to join any one of the two Dominions. The legislative powers were to be exercised by the Constituent Assembly which was already in existence and the governance of the country was to be carried on in accordance with the Government of India Act, 1935, and the Orders-in-Council made thereunder, with such modifications as might be made by orders of the Governor-General.

India was allowed to have her own domestic and foreign policies and she was also free to make her Constitution which would suit her conditions, and free to decide whether she would continue to be a Dominion in the Commonwealth or an ind

pendent State outside the Commonwealth. India selected that course which suited best to the needs of the country and which was to the best advantage of the country as a whole. Taking advantage of a newly won freedom, India started framing her own foreign policy without control or interference from any power outside and she initiated and carried out such policies and programmes both at home and abroad which would raise her reputation both in the eyes of the people of India as also of the people and the nations of the world at large. It no doubt took her a long time to frame her Constitution and during the interim period the Government of India Act, 1935, was adopted with certain modifications so as to bring the Act in line with the new political status acquired by India. The Governor-General was the constitutional head of the Dominion of India and he necessarily acted on the advice of the Ministers.

The Constituent Assembly after finishing the preliminaries with regard to the nature of the Constitution to be adopted for this country appointed a small Committee of experts to prepare a draft of the Constitution on the basis of the general principles approved by them; discussed the draft article by article; and finally adopted with important modifications the Constitution on November 26, 1949, which came into force on January 26, 1950, declaring India to be a Union of States, aiming to constitute India as a Sovereign Democratic Republic.

*The Preamble.* The aim of the Constitution has been stated clearly in the preamble. It is merely an introduction without legal significance, a statement of purposes and not a grant of jurisdiction. It is to secure to all citizens of India social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among all fraternity, assuring the dignity of the individual and the unity of the nation.

The preamble thus serves *two* important purposes : firstly it indicates the sources from which the Constitution comes, from which it derives its claim to obedience, viz., the people of India, whether voters or not. The political power in the Indian Republic, fundamental law and other aspects are all derived and

founded on the consent and acquiescence of the people. It is not an imposed document like that of the Government of India Act, 1935, as the opening words of the preamble suggest. Secondly, the Preamble states the great objects which the Constitution and the Government established by it are expected to promote : justice, liberty, equality and fraternity.

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## CHAPTER 2

### FUNDAMENTAL RIGHTS

The Indian Constitution follows the modern practice in laying down certain fundamental rights for the benefit of the citizens. This is a subject in which every citizen is interested and therefore the framers have adopted these rights for the achievement for which other countries have struggled for centuries together, while in India we have got them almost overnight. Part III deals with fundamental rights which is the most important and the vital part of the Constitution. As only six years have passed since the adoption of the Constitution it is too early to give any final opinion on the fundamental rights.

The declaration of fundamental rights is the most elaborate yet framed by any Legislature in the world. A request for granting fundamental rights was made before the Simon Commission in 1928, but this request was turned down. In 1926-27 a similar demand was made by the Indian National Congress, but was negatived. In 1933-34 before the Joint Parliamentary Committee, many members wanted a declaration of rights, assurance to minority communities and the equality before Law. But the Simon Commission observed, "We are aware that such provisions have been inserted in many constitutions. Experience has shown us that abstract declarations are useless." Even before India was partitioned, the Cabinet Mission in 1935 had accepted the principle of safeguarding the Constitution of 1935, because the problem of the minorities, and the communal problem were very acute and hence there was a very urgent need of having fundamental rights. Before the Constitution was drawn up India had become independent and the result was that fundamental rights were embodied in the Constitution.

The necessity of having fundamental rights has been proved beyond doubt, but there are many who still doubt the wisdom

of including fundamental rights in the Constitution. Even Sir M. Gwyer was opposed to this idea in the beginning, but was obliged to change his views later on. But taking the experience of democratic process, we find that the declaration of fundamental rights is necessary to maintain the liberties of the citizens and working out Parliamentary Democracy. In order that democratic principles may operate, minorities be respected, protection of life and liberty be granted, it is essential that government of persuasion and free political discussion be made possible. It is absolutely necessary to prevent transient majority to pounce upon the rights of the people through legislature without the protection of fundamental rights. It will only establish a reign of the tyranny of the majority if they are not subject to the greater and wider wishes and welfare of the people at large and the establishment of a Welfare State. Fundamental rights are in the nature of a break on the Parliament and Legislature. They are prohibitions of Government action, they are the part of the Supreme Act of the people. Mere enumeration has no value, but effective and speedy methods and judicial review are essential. Our constitution does this and these rights are justiciable. The necessity of embodying fundamental rights has led the framers to insert Article 13, the significance of which has not been understood and appreciated so far. By a mere stroke of pen the Constituent Assembly has rendered all customs and usages which are inconsistent with the Constitution as void. Bad practices and usages die very slowly, but here they are just made void. It is felt by many that the construction upon this article by the Supreme Court in *Keshava Menon v. State of Bombay*, 1951, 6 D. L. R. 97 (S. C.) S. C. C.R. 228 (234, 256), falls short of the true meaning of the Article 13. There are additional rights for peculiar economic and social conditions of India. We have derived our inspiration from the elaborate provisions of the Irish, U.S.A., and English Constitutions, but *mutatis mutandis*. The fundamental rights enjoyed by the Englishman or the American are crystallised in their judicial decisions but this is not the case with India, as this would endanger our Constitution.

The fundamental rights as laid down in our Constitution can be grouped under seven convenient heads as under :

- (1) Right to Equality : (Arts. 14-18);
- (2) Right to Freedom : (Arts. 19-22, & 358);
- (3) Right against Exploitation : (Arts. 23-24);
- (4) Right to Freedom of Religion : (Arts. 25-28);
- (5) Cultural and Educational Rights : (Arts. 29-30);
- (6) Right to Property : (Art. 31);
- (7) Right to Constitutional Remedies : (Arts. 32-33 & 359).

(1) *Right to Equality.* The Indian Constitution uses the expression right to Equality in two senses, viz., 'equality before law' and 'equal opportunity'. (Arts. 15, 16). The framers of our Constitution devoted one full year in studying the Constitutions of other countries in order to incorporate everything that was good into our Constitution so as to make it comprehensive and better. Article 14 provides, "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The phrase 'equality before law' is an expression from the English Common law while the expression 'equal protection of the laws' is an expression from the Constitution of the United States. In trying to take the advantage of both these expressions we have introduced more complications which are being settled by the Supreme Court. Supremacy of Law or Rule of Law as implied by Dicey meant the supremacy of ordinary law and excluded arbitrariness. Dicey also meant equality of law of all citizens. In its true sense it means equality of rights and duties of the citizens. In India the phrase will mean that all citizens will have equal protection of law irrespective of any distinction. It does not mean that all persons should be treated alike. Some sort of classification of the application of law is also envisaged in these provisions, and the Supreme Court has settled the meaning well in the cases brought before it.

However, our Constitution recognises certain exceptions founded on international law, comity of nations, while some are based on political grounds. Article 51 recognises foreign sovereigns, ambassadors, and alien enemies who are recognised as privileged persons and against whom in the words of Jennings, "the right to sue and be sued, to prosecute and be prosecuted, for the same kind of action," is denied. As to exceptions in

favour of the executive head of the Union and the States, and public officials, they are generally treated under Article 361.

The phrase 'equal protection of law' is taken from the American Constitution and has received the same interpretation as is found in America. It is a doctrine evolved by judicial interpretation and pressure of circumstances. The clause is an effective safeguard against the executive and legislative arbitrariness. Discrimination in the execution of law is not allowed as it hinders democratic process and individual liberty. "It was not permissible for the Legislature to leave the Executive with an unguided discretion. The Legislature is guilty of unequal protection if it does not lay down any standard according to which the discretion is to be exercised by the Executive in the matter of granting sanction under section 197 of the Criminal Procedure Code." (Sastri, C. J. *State of West Bengal v. Anwar Ali*, 1953, S.C.A. 835 (846)). The Executive of India are in terror of this article, for Article 14 applies not only to laws but to Executive Acts and hits the Executive and the Legislative actions. Articles 15 and 16 make for separate provisions for the working out of Article 14 in order to ensure its effective working. The provisions are peculiar to this country only and are not found in any constitution of the world. All that has been achieved by Science and Politics is made available to all people in India. There is equality as between the sexes. There are certain provisions even for backward classes, which have been deleted by the Amendment of 1951. The Legislature has also passed the Untouchability Act, making it a criminal offence on the part of those who practice untouchability. Nowhere in the constitution is untouchability defined. Provisions were introduced in order to achieve social equality. Herein we find the levelling process and the working of democracy in its true colours. Herein we also find an echo of the Soviet Constitution.

(2) *Right to Freedom*: Article 19 conditions the usual liberties of citizens. The list is quite comprehensive. These rights, which are enjoyed by all citizens are not absolute. They are properly qualified and limited. They are with reference to the rights of others. For example, my right to move anywhere does not enable me to enter any premise I like. The restrictions



imposed by the legislature are for public good. Rights are declared in unqualified terms but later on they are properly qualified. This may suggest that rights have been given by one hand and immediately taken away by the other. But no constitution in the world has or can have absolute rights. If there is to be progress social, economic and political, rights *must* be qualified in the larger interests of the State and society. Our Constitution-makers have tried to include the essence of all the other constitutions in Article 19. They were not sure that the judiciary would impose restrictions according to the spirit of the times. In America, restrictions have been evolved by the Judges and as already stated, "the American Constitution is what it is as the Judges have said what it should be." But in India this has not been left to the judiciary and hence they are properly codified.

Under 'right to freedom' there are nine different matters as under : (a) All citizens shall have the right to freedom of speech and expression ; (Art. 19(1) ), but the State has the power to make any law putting *reasonable* restrictions on any law relating to libel, slander, defamation, contempt of court, or any matter which offends against decency and morality or which undermines the security, of, or tends to overthrow the State (Art. 19(2) ).

From the above it should be quite evident that clause (1) is dependent on clause (2). The important word in clause (2) is '*reasonable*', and what are reasonable restrictions will ultimately depend upon the court, and for which no definite standard can be laid down. As a matter of fact the words 'reasonable restrictions' in clauses (2) to (6) of the present Article, the Indian Constitution imported within these clauses the American doctrine of judicial reviews with this difference that while in the U.S.A. the Supreme Court had to assume the power of reviewing legislative acts under cover of interpreting the 'due process' clause, our Constitution specifically confers this power upon the Court by the use of the words 'reasonable' in clauses (2) to (6) of article 19. The Supreme Court of India has, in this connection, observed "as regards fundamental rights.....this Court has been assigned the role of a sentinel on the *qui vive*."

(*State of Madras v. Row*, 1955, S.C.R., 597). It follows therefore that what are reasonable restrictions of the freedoms guaranteed by the various sub-clauses is a matter to be decided by the Court, when a case comes before it in the light of circumstances attending the case and no fixed standard of reasonableness can be laid down for the guidance of the Judges, who would be largely guided by their own economic and social philosophy, subject, of course, to precedents.

*Conflict between two Fundamental Rights* : Apart from the question of validity of restrictions being imposed upon the Fundamental Rights declared by the different clauses of Art. 19(1) and under the several limitation clauses (2)-(6), a question may arise as to the interpretation that the Court should make when the application of one Fundamental Right would conflict with another. In *Yasin v. Town Area Committee*, 1952, S.C.R., 572, the learned Judges took the view that all parts of the Constitution must be read together : "When two Fundamental Rights come into conflict and is sought to be extended to extreme and logical conclusions at the expense of the other, a Court would be slow to recognise and uphold such an extension of a fundamental right which infringes and violates another fundamental right." The Bombay High Court in *State v. Damodar*, 1952, 7 D. L. R. 32, (38) Bom., has similarly observed : "a restriction which *fractionally* interferes with the right of freedom of *movement* of one section of the public in the interest of the only way in which another section of the public can exercise its rights of pursuing its *occupation*, cannot be said to be unreasonable."

Even under the English, American and the other constitutions, freedom of speech and expression are regarded as normal. In England, the limit of the freedom is that imposed by the ordinary law relating to defamation, sedition, blasphemy, contempt of court and public order. In the United States restrictions have been adopted under the Doctrine of Police Power of the State, "on grounds of protection of the State from internal and external aggression and prevention of libel and slander, and contempt of Court. In the United States the freedom is curtailed under the "*clear and present danger test*," viz., that the utterance if allowed, would really imperil safety. Thus

the Court would not tolerate censorship of the press on any ground in time of peace, though such a measure may be necessary in time of war, nor punish criticism of Judges unless the test, as stated above is satisfied. In India clause (2), as amended by the Constitution (First) Amendment Act, 1951 enables the legislature to impose restrictions upon the freedom of speech and expression on the following grounds, namely (i) security of the State, (ii) friendly relations with foreign States, (iii) public order, (iv) decency or morality, (v) contempt of court, (vi) defamation, and (vii) incitement to an offence.

(b) *Freedom of Assembly*: (Art. 19(1) (b)) to be read with Art. 19(3) ). To *assemble* peaceably and without arms. The very idea of Government, republic in form, implies a right on the part of citizens to meet *peaceably* for consultation in respect of public affairs. Our Constitution however guarantees the above right subject to three limitations, namely, (a) the assembly must be peaceable; (b) it must be unarmed; (c) the State may impose any reasonable restrictions as may be deemed necessary in the interest of public order. There are several existing Central Laws which restricts this right. Chapter VIII of the Indian Penal Code lays down the conditions when an assembly becomes "unlawful." Section 141 of the code lays down that an assembly of five or more persons becomes an unlawful assembly with the common object of the persons composing the assembly in any of the following manner, namely, by means of criminal or show of criminal force, to overpower the Government or any public servant in the exercise of his lawful powers, or to take possession of any property or to deprive any person of the enjoyment of his incorporeal rights; to resist the execution of any law or legal process; and to commit any mischief of criminal trespass or any other offence. The Arms Act, 1878, forbids individuals either to possess or bear arms. The Constitution goes further than the existing law by providing that a citizen has no constitutional rights to carry arms to any assembly, whether lawful or unlawful, unless he is an official on duty.

But the law may impose reasonable restrictions on the enjoyment of such a right in the interest of public order (Art. 19 (3) ).

(c) *Freedom to form Associations* (Art. 19(1)(c) to be read with Art. 19(4)). In the American constitution there is no specific guarantee of such a right and as a result of this till 1908 trade unions were held to be illegal, being restraints on inter-state commerce. It was only in 1937 that the Supreme Court recognised their legality and the rights of the workers to join the unions, since their object was a legitimate one, namely, improvement of the conditions of the workers in general. In England freedom of association for a lawful object is allowed, unless some unlawful means is adopted. The unlawful means may include conspiracy, trade disputes and quasi-military organisations.

Our Constitution empowers the State to make reasonable restrictions upon the above rights on two grounds : (a) Public order, and (b) Morality.

The existing law of India relating to associations and unions broadly follows the lines of England law. A group of statutes are there which regulate the formation, organisation and working of particular associations in the public interest. For example, the Company's Act, 1913 ; Insurance Act, 1938, Partnership Act, 1932, and similar other laws which have been enacted for the purposes of regulating the activities of particular associations.

(d) *Freedoms of Movement and Residence* : Article 19(1) (d) and (e) to be read with Article 19(5). The articles re. : movement, residence and settlement are not specifically mentioned in all the Constitutions. In the United States these rights are sought to be secured by Section 1, Fourteenth Amendment, which confers dual citizenship and prohibits the States from making any law which abridges the 'privileges or immunities' of citizens of the United States.

In India the rights enumerated in Clauses (d) and (e), have for their object the removal of all internal barriers in the country and to make India as a whole the abode of citizens of India. These provisions are therefore complementary to Article 5 which provides a single citizenship. But the State under Article 19(5) may impose restrictions upon the three freedoms in the interest of the general public, and for the protection of the

interest of any Scheduled Tribe. This is because like other individual rights, these rights cannot be absolute. Even in England the individual's right of free movement and access is denied in the case of prohibited places and protected areas under the Official Secrets Acts. Similar restrictions on movement and travelling may also be imposed by law in all countries, in order to prevent or control epidemics, contagious diseases or the like. For example, a person suffering from infectious disease may be prevented from moving freely and thus spreading the disease. Similarly, healthy persons may be prevented from entering a plague-infected area in the interests of the general public. Strategic places and other fortified areas may also be prohibited in the interests of general public. Similarly, a provision for the externment of persons from particular localities becomes necessary because their presence may endanger the peace and safety of the citizens living in that locality. What restrictions can be considered reasonable must depend upon the substantive as well as procedural standpoints.

(f) *Freedom of Property*: Article 19(1) (f). By this article a citizen can reside and settle in any part of the territory of India and acquire, hold and dispose of property. This right of property consists not merely in ownership and possession but in the unrestricted right of use and disposal. But like other individual rights, it is not absolute, and is subject to—(a) the police power; (b) taxing power; and (c) right of eminent domain all of which belong to the State.

In the Constitution of United States, the 14th Amendment uses the word property in juxtaposition with liberty, as the Courts have also interpreted the word property to mean an essential condition of liberty. In England also every Englishman has three absolute rights in the free use, employment, and disposal of all his acquisitions without any control or diminution, say only by the laws of the land.

In India there is some controversy as to the precise scope of the guarantee embodied in Article 19(1)(f), namely, whether it covers both abstract and concrete rights of property. In *Chitranjit Lal's case*, it has been held that the right under this Article

means the right to possess as well as to enjoy all the benefits which are ordinarily attached to the ownership of property, and it also includes the right to enjoy all the concrete rights which follow from ownership. But in *State of W. Bengal v. Subodh Gopal* it was held that this Article deals with the right to own property and not the right to the property owned (which is dealt with in Article 31). But the unanimous judgment is that Article 19(1)(f) applies equally to concrete as well as abstract rights of property and this view is being maintained in subsequent cases.

Article 19(5) authorises the State to impose reasonable restrictions on the exercise of right of property—(1) in the interest of the general public; (2) for the protection of interest of any Scheduled tribe.

*Article 19(1) (f) and 31.* Both these articles deal with the right to acquire, hold and dispose of property. Clause (1) of Article 31 guarantees the right not to be 'deprived of one's property save by the authority of the law.' While Clause (2) of article 31 guarantees that private property cannot be acquired or taken possession of by the State except for public purposes and without payment of compensation. The question is whether there is any overlapping between these two articles and the situation in some of the later decisions has been complicated, and the present position can by no means be said to be clear. The opinion in *Gopalan's* case was that the capacity to exercise the right guaranteed under article 19(1)(f) was gone when property was compulsorily acquired under Article 31(2). This reasoning was followed by the High Courts in many cases to hold that Article 19(1)(f) had no application when a person was deprived of his property by law enacted by a competent legislature under Article 31(1) or when the legislature provided for its acquisition or requisition for public purposes under Article 31(2). As a result of this a citizen had no right to inquire into the reasonableness of laws coming under either clause (1) or (2) of Article 31. As a result of all this no cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of article 31; and each case, therefore, must be decided on its merits.

(g) *Freedom of Profession.* Article 19(g) to be read with

Article 19(6). "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business." This freedom means that every citizen has a right to choose the employment or to take up any trade or calling, subject only to the limits as may be imposed by the State in the interest of the public welfare. This article does not guarantee a monopoly to any individual or association to carry on any occupation. The right to carry on a business includes the right to choose it at any time the owner likes.

In the Constitution of the United States although no specific provision guaranteeing this right has been made, it has been held by judicial interpretation that all citizens have a right to the freedom of trade, business and profession, subject to such restrictions as the State may think fit to impose in the interest of the common good. Even the Swiss Constitution by Article 31 guarantees the freedom of trade and industry.

But this right may be subjected to reasonable restrictions in the interest of the general public, for example, when the business carried on is a public utility service or when the closure assumes the form of a 'lock-out' and raised an industrial dispute which the legislature wants to prevent. What the article guarantees is the limited right to carry on trade or profession depending on the terms and conditions as may be imposed by the statutes in the interest of the general public. The right of a lawyer to practice is not a natural, or absolute right but is subject to the terms and conditions laid down in the Bar Council's Act which requires an Advocate to get himself enrolled and then to practise in different courts in India. Under Clause 6 of Article 19 the power of the State may be used in—(1) prohibiting inherently dangerous or immoral occupations which cannot be allowed to exist at all, for example, gaming, sale of intoxicating drugs; (2) forbidding the employment of women and children in certain services like the mines, in the interest of their health and safety; (3) to impose regulations for public safety as in the case of public carriers requiring them to fix and publish their charges periodically; (4) imposing regulations for the protection from fraud of other traders, for example, punishing the forging of trade marks; (5) prohibiting the conduct of certain

business within specified areas, for example, maintaining a stable within the crowded limits of a city; preventing the monopolistic control of a business by a trader and prohibiting combinations in restraints of freedom of trade; and (6) undertaking to introduce labour legislation for the purposes of regulating the hours of work, prescribing holidays, sick leave, and other facilities to the employees. If the State itself seeks to carry on a trade or business ousting private traders from that trade wholly or partially the State could be justified to do so only if it was reasonable. However, the Amendment of 1951 exempts the State from that condition of reasonableness, by laying down that the carrying on of any trade, business, industry or service by the State would not be questionable on the ground that it is an infringement of the rights guaranteed by Article 19(1)(g). Hence, the State is now free either to compete with private traders or even to create a monopoly in favour of itself without being called upon to justify itself in the Court as reasonable.

*Note.*—Article 19 must be studied with Article 358 which enacts that the above provisions of article 19 are liable to be suspended during the time that a Proclamation of Emergency is in operation. Article 358 provides that during a Proclamation of Emergency, the State including legislative, executive and local authorities shall be free from the restrictions imposed by Article 19. But with the expiry of the proclamation the rights under Article 19 will automatically revive.

### **Protection of Life and Personal Liberty (Art. 21)**

This is the most cherished thing in the world. Article 21 provides, "no person shall be deprived of his life or personal liberty except according to procedure established by law." The object of this Article is to put a restraint upon the Executive so that it may not proceed against the life or personal liberty of the individuals save under the authority of law. The Article is not intended to be a constitutional limitation upon the powers of the legislator otherwise conferred by the Constitution. Article 21, read with Article 22 contains all the provisions relating to deprivation of life or personal liberty, as distinguished from restric-



tion of right to move freely throughout the territory of India as given under Article 19(1)(d) and (5).

The Fifth Amendment to the Constitution of the United States declares, "No person shall be.....deprived of his life, personal liberty or property without due process of law." The 14th Amendment imposes similar restriction on the State authorities. These two provisions are conveniently referred to as the 'due process clauses.' The American judiciary has a right to declare a law as bad even though the competence of the legislature to enact such a law is perfectly within the limits of the Constitution. In the *Darmouth College case*, the due process clause has been defined as the "process of law which *hears* before it condemns, which proceeds upon enquiry, and renders judgment only after trial. Its meaning is that every citizen shall hold his life, liberty and property and immunities under the *protection of the general rules*, which governs society." In short, 'due process' as regards criminal trial means that no person is to be punished except for a violation of definite and validly enacted laws of the land, and after the trial conducted in accordance with the specific procedural safeguards written in the Bill of Rights, to secure, in short, a fair trial. In England the Magna Charta includes that "no man shall be taken or imprisoned or outlawed, or exiled, or in any way destroyed save by the lawful judgment of his peers or by *the law of the land*." Explaining this the Privy Council have maintained that "in accordance with British Jurisprudence no member of the Executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of Justice. And it is the tradition of British Justice that Judges should not shrink from deciding such issues in the face of Executive."

In India the duty of seeing that no member of the Executive can interfere with liberty or property of the citizens except on the condition that he can support the *legality of his action*, devolves on *our* Courts. At the same time our Constitution does not guarantee the right to any particular procedure and though the Supreme Court has denied to itself the right to examine the reasonableness of any law depriving a person of his liberty, it has,

in fact, interfered in many cases with such an order depriving the liberty of the citizens on the ground that the procedure laid down by the law which authorises such deprivation has not strictly been followed. On such grounds, the Court, in a proceeding for *habeas corpus* will at once set the prisoner at liberty. This principle has been applied to both the cases of punitive as well as preventive detentions.

*Note.*—The freedoms referred to in Article 19(1) are guaranteed to a citizen while he is a free man. But as soon as he is lawfully deprived of his personal liberty, as under Articles 21 and 22, he loses his capacity to exercise the several rights enumerated in the several sub-clauses of Article 19(1) and cannot complain of the infringement of any of those rights.

### **Protection against Arrest and Detention in certain cases (Art. 22)**

This article provides a limitation on the power of the Legislature conferred by Article 21, to make any law for the deprivation of personal liberty of the citizen. It follows, therefore, that our Constitution has given legislative powers to the States and the Central Government to pass laws permitting preventive detention. For this purpose Article 22 lays down the permissible limits within which preventive detention powers can be exercised by the legislature and prescribing the minimum procedure that must be included in any law permitting preventive detention and as and when such requirements are not observed the detention, even if valid, *ab initio*, ceases to be so in accordance with the procedure established by law and thus infringes the fundamental law of the detenu guaranteed under Articles 21 and 22(5) of the Constitution. It should also be noted that Articles 21 and 22 are independent provisions and are not governed by anything in Article 19.

Article 22 can be divided into two parts : One part dealing with persons arrested under the ordinary law of crimes and another part dealing with persons detained under the law of 'preventive detention'.

*Under ordinary Law.* When a person is deprived of his per-

sonal liberty, under the ordinary law of the land, the arrested person must, as soon as may be after arrest, be informed of the grounds of his arrest, produced before a magistrate within 24 hours of his arrest, and the arrested person is given the opportunity to consult a legal practitioner and to defend himself.

*Under Preventive Detention.* Clauses (4)-(6) provide certain limitations upon the power of the Union and State legislatures to make any law providing for detention without trial. Government is ordinarily entitled to detain a person in custody only for three months and it is for the Parliament to make a general law laying down the classes of cases who may be detained for more than three months. For detaining a person beyond three months, without trial, it has to obtain the report of an Advisory Board that there is sufficient cause for such detention. The detenu is also given the grounds of his detention and is also offered the earliest opportunity to make representations against such detention (clause 5). Under clause 6 the authority is not bound to disclose facts which may be considered by the authority to be against public interest to disclose. It is for the Courts to jealously guard the above limitations and to see that they are not violated by the Executive or the Legislature, because "preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court." (*Ramkrishan v. State of Delhi*, 1953, S. C. R. 604).

In other countries, preventive detention is usually resorted to in abnormal times like war or crisis. But in India on account of abnormal disturbances and the fear of external aggression it has always been found advisable to have this article even in normal times. As stated above the Supreme Court and High Courts have been very liberal in releasing persons detained under this Article, if they found that the grounds for detention were vague or procedure irregular. We are certain that in future this provision will have to be modified.

At Common law, a person had no right to be defended by a Counsel. However in 1695 and thereafter laws were passed permitting the accused to be defended by a Counsel. In case if a

man was too poor to take the help and advise of a Counsel, he was provided legal aid at public expense. Under the Legal Aid and Advice Act, 1949, a fund has been established, partly contributed by the State, out of which legal aid is provided to persons having income below a given minimum, that is, £420 per annum, through a local Committee whether in civil or in criminal cases. In the United States, though there is no express provision in the Constitution requiring offer of free legal advice to an accused, the right has been deduced, so far as *capital* cases are concerned, from the right conferred by the 6th Amendment of the Constitution "to have the assistance of Counsel for defence." In India, there is neither any constitutional nor statutory requirement to provide legal aid to an accused at the cost of the State. Section 340(1) of the Criminal Procedure Code provides that the accused has the right to be defended at the trial by a Lawyer.

Considering Article 22 we find that clauses (1) and (2) of this Article suggest that the fundamental rights conferred by this Article gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation that the arrested person has or is suspected to have committed or about or likely to commit an act of criminal or quasi-criminal nature or some activity prejudicial to the public or State interests. In short the Article was designed to give protection against the act of the executive or other non-judicial authority.

For the application of cl. (1) two conditions are necessary : (i) The arrest must have been made without warrant of a Court; and (ii) the person must have been taken into custody on the allegation or accusation of an actual or suspected commission of any offence of a criminal or quasi-criminal nature, or some act prejudicial to the public interest.

*Clause (2)* sets a maximum time limit not only for the production of the arrested person before a magistrate but has a right to know the grounds of his arrest as soon as reasonable in the circumstances, and if the Court finds that a reasonable time has already passed and the arrested person has not been informed of the grounds of his arrest, the Court would order his

immediate release. So, even though the arrest had been valid, initially, the failure to supply the grounds within a reasonable time may render *further* detention unconstitutional or illegal. The arrested person has also a right to consult and to be defended by a legal practitioner.

*Clause (3).* This clause is an exception to clauses (1-2). The result is that enemy, aliens, as well as persons detained under the law of preventive detention have neither the right to consult nor to be defended by any legal practitioner. Article 22(5), of course, gives the detenu, a right of representation but he is not entitled to any hearing before the detaining authority.

*Clause (4).* Under this clause, *ordinarily*, persons cannot be kept in preventive detention for more than three months without taking the opinion of the Advisory Board which consists of present or past High Court Judges. If the opinion of the Board is against detention for more than three months the detenu must be released forthwith. It shows that the Advisory Board is not to be consulted for detaining persons for three months or less.

*Clauses (5 and 6).* When any person is detained, in pursuance of an order, made under any law providing for preventive detention, the authority making the order shall, (except when it considers it to be against the public interest so to do) communicate to such persons the grounds on which the order has been made and shall afford him the earliest opportunity of making the representation against the order.

*Clause (7).* Parliament may by law prescribe—(a) The circumstances under which, and the clause or clauses in which, a person may be detained for a period longer than three months under any law, providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4) :

- (b) the maximum period for which a person in any clause or clauses of cases may be detained under any law providing for preventive detention: and

- (c) the procedure to be followed by an Advisory Board in an enquiry under sub-clause (a) of clause (4).

*Clause (7)* of the Article, provides for cases in which Parliament can, by law, authorise preventive detention for more than three months without obtaining the opinion of an Advisory Board. It may be supposed that this is only a minor exception to the general rule mentioned in clause (4), namely that no person can be detained for more than three months without the concurring opinion of the Advisory Board.

### **Preventive Detention and Fundamental Rights**

The law relating to Preventive Detention as enunciated in clauses (4) to (7) of Article 22, is rather anomalous in a Chapter of the Constitution, which guarantees fundamental rights. As a matter of fact the law relating to preventive detention is by nature repugnant to democratic ideas, and no such laws exist in the U.S.A. or in England. It is, therefore, a very astounding fact that under '*our*' Constitution persons can be kept in preventive detention both in normal times as well as in times of emergency. In emergencies like War, any enactment or law, however, tyrannical, or harsh, is welcome. Our constitution has, however adopted preventive detention as a subject matter of peace-time legislation, as distinct from emergency legislation during periods of stress and strain.

The object of incorporating preventive detention in our constitution was to prevent anti-social and subversive activities from endangering the welfare of the infant Republic. At the same time, our constitution has also provided certain safeguards to mitigate the harshness by placing fetters on the legislative powers conferred on this subject under Article 22. One practical result of incorporating preventive detention in peace-time is that the courts cannot question the sufficiency of reasons for depriving a person of his liberty. It may be noted that as India is still passing through an abnormal situation even six years after her independence, preventive detention may be treated as a measure that is necessary to meet with the exigencies of a national emergency. In this connection, attention may be

drawn to two cases under the English Constitutional Law, namely, *Liversidge v. Anderson* and *Darnel's case* in which it was laid down that the crown has no absolute power to commit, and that on a motion for *Habeas Corpus*, the Court has the power to consider the *sufficiency* of the cause of commitment. From this point of view *Liversidge's* case is only an exception to the general rule prevailing in England based on the consideration of the exigencies of a national emergency. During the two Great Wars, regulations were framed under the Defence of the Realm Act. In spite of this the House of Lords held, that the Courts could not interfere with an order of detention except where it had been made without good faith, the onus to prove which was on the person who challenged the order (*Liversidge v. Anderson*, 1942, A.C. 206).

The traditional theory of 'personal liberty' as Dicey understood it has undergone a revolutionary change since the decision in *R. v. Halliday* and *Liversidge v. Anderson* and in spite of what Dicey said with regard to personal liberty, which meant that physical restraint may be justified only on the ground that the person has been accused of some offence and must be brought before the Court to stand his trial, or he has been convicted of some offence and must suffer punishment for it, is no longer believed in and it is now settled that Parliament may empower the Executive to make regulations for the detention without trial of person whose detention appears to be expedient "in the interest of public safety and the defence of the Realm."

In the Constitution of the United States, there is no provision for preventive detention in times of peace but under the Internal Security Act, 1950, Sections 100-103, provision has been made for preventive detention in an 'emergency'. Invasion of the territory, declaration of War by Congress, insurrection within the United States in and of a foreign enemy, are the events in which the President may make a Proclamation of Emergency and during the continuance of such emergency, the President is authorised to apprehend and by order detain "each person as to whom where there is a reasonable ground to believe that such person *probably* will engage in or *probably* will conspire with others to engage in acts of espionage or of sabotage." This

is, no doubt, a grand departure introduced in the constitutional history of the United States, because this provision has not yet been given effect to, but as a result of evidence adduced before various committees, the Congress has found it necessary to introduce such a clause in the constitution of the United States.

In India under *our* Constitution, the Legislature has been empowered to provide for preventive detention even in times of peace and Entry 3 of List III, authorises the Union and State Legislatures to provide for preventive detention to maintain internal security, public order and the essentials of life, apart from any conditions of war. This is certainly an extraordinary departure from the English and American ideals of personal liberty. It is for this reason that the Courts in India have taken particular care and caution in applying a law passed under this power, even though they may not be competent to question the wisdom and the propriety of the provision itself but the Supreme Court has right to maintain as it did in *Ram Krishan v. State of Delhi*, 1953, S.C. 318, "Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court."

The first Act of Preventive detention passed by Parliament under the above powers conferred by the constitution was Act IV, of 1950, which came into force on the 25th February, 1950, and after that the life of the Act has been extended from time to time. However, in future, this provision will have to be modified though it is doubtful that it will entirely be abolished.

### **Right to Freedom of Religion (Article 25)**

One of the salient features of the Indian Constitution is that it establishes a secular state. It is difficult to say what is exactly meant by this clause. As a matter of fact, every Constitution guarantees freedom of religion but our constitution has taken a further step in allowing everyone to preach and practice, propagate any religion. Religion is a matter between an individual and his Maker, and it is strange that this should be



guaranteed by the constitution. The right to propagate is a very dangerous provision, the implication of which is not recognised yet. Of course, this propagation is subject to public order, morality and health and to the other provisions of this Part. But what is morality is a moot question and can be interpreted variously to suit different purposes. No absolute answer can be given. But it is to be judged essentially by the total collection of Public conscience, for, it is a reaction of public opinion. It is strange paradox that after partition one State should proclaim secularism, while the other has proclaimed itself as a theocratic state. This only proves how society is being reconstructed by the twist we try to give to fundamental rights. There is no constitution in the world where fundamental rights are guaranteed to religious denominations and minorities. Of course, with this article, all religious studies in schools and colleges were stopped overnight.

However, certain exceptions are made with regard to the enjoyment of freedom of conscience and religion. For example, matters of personal law, are subject to regulations or restrictions by the state in the larger interests of society (Article 25(2) (a)), or where there is a conflict between religious practices and the need of social reform, religion must yield, (Article 25(2) (b)). This shows that the State, can overrule religious injunctions prohibiting certain classes from entering the temples or other religious institutions.

The First Amendment to the constitution of the United States says,—“Congress shall make no law respecting an establishment of religion or...prohibiting the free exercise thereof.” This means, (a) that neither a State, nor the Federal Government can set up a Church and neither can pass laws, which may aid one religion or all religions or prefer one religion over another. Neither can they force nor influence a person to go to or remain away from a Church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs for church attendance or non-attendance. Neither can they openly or secretly participate in the affairs of any religious organisation or groups, (b) the guarantee of ‘free exercise of religion’ means that there are no restraints upon the free exer-

cise of the religion according to the dictates of one's conscience, or upon the free expression of religious opinions, save those imposed under the Police power. It follows, therefore, that freedom of religious propaganda or solicitation may be regulated by the States in the interests of public safety, peace, comfort or convenience or for the prevention of fraud, provided that the restriction is not arbitrary or excessive and does not place in the hands of an administrative authority a discretionary power to determine a religious matter.

Even the Soviet constitution of 1936, by Article 124 guarantees "freedom of religious worship and freedom of anti-religious propaganda for all citizens." The French constitution 1936 also assures that "No one ought to be disturbed on account of his opinion, even religious, provided their manifestations does not derange the public order established by law."

*Freedom to manage religious affairs (Article 26) :* Freedom of religion is meaningless if there is no liberty to maintain, manage, to own and administer property, unless the freedom to manage religious affair is not guaranteed with the freedom of religion. Hence, Article 26 is a corollary to Article 25. It also shows that while the right guaranteed by Article 25 is the right of the individual, the right conferred by Article 26, is a right of the community or a section thereof.

*Freedom as to payment of taxes, for promotion of any particular religion (Article 27).* This article secures that the public funds raised by taxes shall not be utilised for the benefit of any particular religion or religious denomination. If a State, therefore, imposes a tax for the promotion of any religion, it would be quite lawful for a person to refuse to pay such a tax.

*Freedom as to attendance at religious instructions (Article 28) :* Educational Institutions wholly maintained out of State funds shall not provide religious instructions. Even those institutions which are recognised by the State or receive aid from the State shall not compel any person to attend religious worship that may be conducted in such institutions without the consent of such persons and in case of minors without the consent of his guardians. This article, it should be clear is confined to edu-

cational institutions maintained, aided, or recognised by the State, but does not relate to institutions which have no connection with the State.

Another condition of State aid has been indirectly introduced by cl. (2) of Article 29. A religious community may maintain educational institutions of its own and give religious instructions there : but if it wants State aid, it cannot prevent citizens of other communities from getting admission into the institutions; and when the latter are admitted, the exclusive character of the institution will no longer exist for under Article 28 (3), the pupils of other communities shall be free not to take the religious instructions imparted in that institution.

### **Cultural and Educational Rights (Articles 29-30)**

These rights are not guaranteed in any other constitution of the world. Indian culture is and has always been one from Hardwar to Rameshwar. Strangely but truly, the country appears to be moving backwards. Under the foreign domination, India was, to a certain extent, united by the ties of a common language, namely English, which Macaulay made it compulsory to manufacture clerks only, but out of this there resulted the strange and (so called) unification of India. We are now starting movements, which if they fructify, will introduce disruptive forces and break our unity to pieces. Our constitution-makers have gone all the way to maintain this unity even in federalism. We have been victims of foreign aggressions since centuries now, but in no time, we have achieved great things of which we may truly be proud as after 1947. Even the problem of the Native States was solved in a manner unknown in human history for one third of the Indian territory was integrated within a short space of three months—a phenomenon unheard of in human history. In human affairs, it is difficult to begin anew but when once seeds of disruption are sown they bring about very quick ruin. We must try and arrest these evil forces at any cost. All that tall-talk about various cultures being developed in separate linguistic States, should be put down heavily, if we wish to achieve unity. The need for one common language is not only paramount but self-evident.

While cl. (1) of Article 29 protects the right of a *section* of the citizens, cl. (2) guarantees the fundamental rights of an individual *citizen*. It follows that cl. (2) gives an aggrieved person who has been denied admission on the grounds of his religion etc., a remedy even though other members of his religion have not been admitted. The only condition is that he must have the requisite qualifications to seek admission in a particular educational institution, without which he has no ground to complain of any infringement of his fundamental rights under Article 29 (2). But it is not correct to say that Article 29 (2) confers a fundamental right only upon members of minority groups and not on every citizen. According to the Supreme Court, Clause (1) of Art. 29 already protects the interests of minority groups and therefore clause (2) is necessarily intended to protect the interests of citizens generally and without any limitation.

*Articles 15 (1) and 29 (2)* : Article 29(2) is a counterpart of the equality clauses of Article 15. Article 15 is a protection against discrimination generally, while Article 29 (2) is a protection against particular species of wrong, namely, denial of admission into educational institutions of the specified kind. Another point of difference is that while Art. 15(1) is available against the State, Article 29(2) is available not only against the State but also against any person or authority who may deny the right conferred by it. "To limit this right only to citizens belonging to minority group will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they may contribute by way of taxes. We see no cogent reasons for such discrimination." (*State of Bombay vs. Bombay Education Society*, 1954, S.C.A. 787).

Comparing Article 15(1) with Article 29(2), it appears that while 'sex' and 'place of birth' are specified in the former, they are omitted from the latter Article. The question is, which is a controlling provision amongst these two Articles. The Calcutta High Court in *Anjali v. West Bengal* has held that the general provision against Art. 15(1) is not controlled by anything in Art. 29(2). On the other hand, the Madras High Court

in *University of Madras v. Shantibai* has held that Art. 29(2) being a special provision relating to admission to educational institutions, the maxim '*generalia specialibus non derogant*' should apply and Article 29(2) should be regarded as the controlling provision and not Art. 15(1). The Madras view has now gained support particularly from the observations of the Supreme Court in *State of Bombay v. Bombay Education Society* in which Their Lordships observed, "Art. 15 protects all citizens against discrimination generally, but Art. 29(2) is a protection against a *particular species of wrong*, namely denial of admission into educational institutions."

### Right to Property (Articles 31—31-B and Schedule 9)

The right of a nation or State to take private property for public use is eminent or paramount. It is a right that transcends private ownership. It is inherent in the nature of sovereignty of the State 'that the government shall have the right to acquire private property for an essential public use even when the owner of the property objects to give it up.' Without this a government could not perform its functions because the private property is needed from time to time for various public purposes, for example, for fortifications, navy-yards, post-offices, schools, parks highways, and so on. "It is, therefore, laid down that if a person is to be deprived of his property it can be done so only by authority of law but not without proper compensation." Various legislatures have passed Zamindari Laws in order to take over their lands and thus bring about agricultural revolution. (Arts. 31-A and 31-B). These provisions are far reaching in their effects but the implications of which have not been realised so far.

All matters relating to compensation for property acquired or taken possession of by the State are absolutely non-justiciable, that is to say, Courts have no power to go into the question of adequacy or otherwise of such a compensation. The legislature alone can fix the amount or lay down the principle for assessing the compensation.

(Art. 31 guarantees the fullest protection to private property. It not only provides that no person can be deprived of property

by the Executive without legislative sanction but it has further provided that even the legislature cannot deprive a person of his liberty unless there is a public purpose and then only on payment of compensation.) (Article 31 therefore is the limitation on the State's power to take property of a person and this right is protected by defining the limitation on the power of the State without the consent of the owner. Clause 1 provides that private property can only be taken pursuant to law. Clause 2 imposes two limitations on the legislature itself. Clause 3 places an additional limitation on State laws enacted on the subject. Clause 4 limits the justiciability of the quantum of compensation in certain cases. Clause 5 saves the operation of Clause 2 laws made on certain subjects. Clause 6 takes out laws enacted within 18 months prior to the commencement of the Constitution from the scope of Clause 5(a) and makes exclusive provision in Clause 6 regarding such laws.

Even in other Constitutions of the world we find that the right to private property has been guaranteed properly. The Fifth Amendment to the American Constitution says:—"Nor shall any person be deprived of.....property, without due process of law". Section 1 of the 14th Amendment 1868, imposes a similar prohibition upon the State. The provision is founded on the theory of individualism and states *inter alia* that private property is what a man acquires as his property, either by inheritance or by personal efforts or by other lawful means, and if so, no power can take away that from him arbitrarily. In England in *Entick v. Carrington*, His Lordship observed, "By the laws of England every invasion of private property be it ever so minute is a trespass. No man can set his foot upon my ground without my license. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him." Further, every subject has a right against unlawful deprivation of property in his lands and goods. English law in short, recognises private property which can only be taken by the State (a) by the consent of the owner, or (b) under authority of Parliament, which represents the consent of the nation. Even in Russia under the Stalin Constitution small private economy of individual peasants and handicraftsmen, de-

rived from personal labour, but free from exploitation of another's labour, is secured by law. Citizens are also guaranteed by law the right of personal property "in the income from their toil and in their savings, in their dwelling house, auxiliary domestic economy, in articles of their domestic economy and use, in articles of personal use and comfort, as well as the right of inheritance of personal property....."

Clauses 1 and 2 provide that the property of any citizen cannot be confiscated unless it is sanctioned by law, and when the law professes to take property 'for public purposes', there is a right to compensation, subject to clauses (4-6) of Art. 31 and Arts 31-A-31-B. Apart from clause 2 there is no constitutional right to compensation. Following on these lines, the *Sholapur Spinning and Weaving Ordinance*, promulgated on 9th January 1950, empowered the Central Government to take over the management of the Company by appointing directors of the company for its administration. As a result of this Ordinance all properties and effects of the company passed into the hands of persons nominated by the Central Government who became vested with the possession, control and management of the Company. ✓ It was held that there was *deprivation* of the property of the company within the meaning of clause 1 of Art. 31 without payment of compensation as required by Clause 2 and hence the Ordinance was void. It follows therefore that clause 1 of Article 31 of *our* Constitution is a limitation upon the Executive, as it is in England, and not upon the Legislature. There is no provision for a judicial review on the ground of reasonableness or otherwise of the laws, just as in the case of laws coming under Art. 21. Hence the validity of a law coming under Art. 31 on the ground that it is retrospective cannot be challenged in our Courts.

As regards Clause 2 it is not a matter for Courts but for the Legislature exclusively to determine whether there is sufficient public benefit to warrant the taking; or when and in what manner and to what extent the public necessities require the exercise of the power of the eminent domain. The expression '*public use*' has been widely interpreted to include purposes relating to the functions of the government. Property taken for establish-

ing public parks, cemeteries, markets, highways, bridges, are all cases of property taken for public use. But adequate compensation is to be given for property so acquired. However, no compensation is payable under the Fifth Amendment in the following cases : (a) When destruction of a property is necessary to save the public against eminent danger, such as spreading of contagious disease, (b) When destruction of property is necessary to prevent the enemy from getting strategic advantages or for successful prosecution of war. But compensation is payable where the Army requisitions private property for its use. (*Refer Att.-Gen. v. De Keyser's Royal Hotel*).

What constitutes a public purpose is purely an objective matter and therefore it is justiciable, although some of the High Courts have expressed doubt on this point. The Supreme Court however in *State of Bihar v. Kameshwar* has laid down a few propositions on this point :

(a) The existence of a public purpose is an essential condition for the acquisition of property under Art. 31(2) and the question is justiciable;

(b) When the legislature declares that there is public purpose the Court shall respect its words.

(c) It is unnecessary to state in express terms in the statute itself the precise purpose for which the property is taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for the purposes of the State or for the purposes of the Public and that the intention was to benefit the community at large. For example sec. 4(b) of the *Bihar Land Reforms Act, 1950*, provided that all outstanding arrears of rent, which were due to the proprietors and tenure-holders at the date of acquisition of the estates, should vest in the estate, though the liability of the zamindars for payment of arrears of revenue and cesses should remain. Held, that this legislation was void as no public purpose was involved. It had no connection to the planned reform for which the law was passed.

✓ *Manner in which compensation is to be determined and given* : A law coming within the purview of Art. 31(2) should



not only fix the amount of compensation or specify the principle relating thereto but must also specify the form and manner in which compensation is to be paid to the party whose property had been acquired for public purposes. Thus, the legislature may validly provide that compensation shall be payable in instalments, together with interest, or partly in cash or partly in bonds. As regards the amount to be paid, although our constitution does not say that 'just compensation' may be given, the Supreme Court has nevertheless held that the very word 'compensation' means a 'full and fair money equivalent' of property taken and any law which denies this must be held to be void. Hence, the Courts can interfere with the legislative determination of compensation which defines that the provision for compensation is merely a cloak for confiscatory legislation, where the compensation is based on something which is unrelated to facts, and where the principle laid down by the legislature is arbitrary.

As regards what is fair and just compensation, it is difficult matter to decide. However, the Supreme Court has formulated a general proposition for the purposes of determining the compensation in case of property acquired for public purposes. 1. Market value is the ordinary measure of compensation for acquisition, while rental value is the measure for requisition or temporary taking; 2. It is the owner's loss, not the taker's gain which should be the measure of compensation; 3. When a part from a bigger piece of land is taken, compensation must also be paid for any incidental injury to the remaining part not taken, but not for injury to separate tracts; 4. When the property which is taken possession of was being used for a business or profession, loss of occupation or profits must be taken into account while computing compensation; 5. When government assumes control over the management of business or enterprise, government must pay for all the extra losses which may occur as a result of government's assuming control or supervision; 6. Since compensation denotes the full value of the property at the time of 'taking', where the payment takes place subsequently, reasonable interest must be paid from the date of taking to that of payment; and 7. The right to compensation must also be *unconditional*.

*Clause (3).* No law of compulsory acquisition coming within the scope of Article 31(2), passed by any State Legislature shall be valid unless the Bill is reserved for consideration of the President and the President gives his assent to the same. But Article 31(3) read with Article 200, does not require the President to give his assent twice over, once under Article 31(3) and again under Article 200.

*Clause (4).* Clause (4) relates to Bills of a State Legislature relating to public acquisition which *were pending* at the commencement of the Constitution. If such Bills were passed and assented to by the President, the Court shall have no jurisdiction to question the validity of such laws on the ground of contravention of clause (2), which provides for just and adequate compensation or if there is no public purpose underlying the legislation. But clause (4) would not restrict the Courts from examining the validity of the law on the grounds of legislative competence of the State legislature or whether the law contravenes the guarantee of equal protection in Article 14, for example, by providing different principles of compensation for different classes of persons without any reasonable basis for such classification. It would ultimately mean that such legislation would be immune from attack on any ground relating to the question of quantum or adequacy of compensation to be paid or of non-payment of compensation at all. But their Lordships in the Supreme Court were not prepared to go so far in *State of Bihar v. Kameshwar*. They held this view because Entry 42 of List III was a mere head of legislation and in order to exercise the power of legislation for acquisition, the legislature must conform to the provisions of Entry 42 of List III. Even under this, their Lordships held that the legislature must lay down the 'principles on which compensation is to be determined, and if a legislature says that no compensation is to be paid, that does not amount to laying down the principles on which compensation is to be determined and thus the legislature would be committing a fraud on this power.'

*Clause (5).* This clause provides a number of exceptions to the requirements of Clause (2). Laws coming under this clause will not be subject to examination with regard to its validity by the Courts either on the ground of absence of provi-

sions of compensation or on the ground of non-existence of public purposes. Under clause (5); therefore, we have two classes of laws—(a) 'Existing law,' other than those which come under clause (6), that is, laws enacted more than 18 months before commencement of the Constitution; and (b) any law made by a State legislature or by the Union Parliament for any of the purposes mentioned in items (i) to (iii) of sub-clause (b).

With regard to the sub-clauses to clause (5) the object is to save from operation of clause (2) laws which are to be made in future, either by the Union or by the States for (a) the promotion of public health, or (b) the prevention of danger of life and property, even though such laws might involve the 'acquisition' or 'taking possession of' property within the meaning of clause (2). Any law which has for its objects mentioned in clauses (a) and (b) above, may not provide for the payment of any compensation.

*Clause (6).* This is another exception to clause (2) and is an ouster of jurisdiction of the Courts. While clause (4) relates to Bills pending in the State legislature at the commencement of Constitution, clause (6) relates to Bills enacted by the State within 18 months before commencement of the Constitution, that is, Acts enacted not earlier than 26-7-1948. If the President *certifies* such an Act within three months from the commencement of the Constitution the Court shall have no jurisdiction to invalidate such an Act on the ground of contravention of clause (2) or sec. 299(2) of the Government of India Act, 1935. But a Bill not certified by the President will be affected by Article 31(2).

The certificate cannot, however, validate the legislative competence of the State legislature for passing such Acts. Thus, the Madras Electric Supply Undertakings (Acquisition) Act, 1949, has been declared *ultra-vires* on the ground that the Government of India Act, 1935, did not give any power to acquire a commercial or industrial undertaking to the Provincial Legislatures.

### Articles 31-A and 31-B

These two articles, viz. 31-A and 31-B, were not incorporated in the Constitution as originally framed, but they have

been incorporated by the Constitution (First Amendment) Act, 1951, which provides that 'after Article 31 of the Constitution the following Articles shall be inserted and shall be deemed always to have been inserted.' The effect of these articles is to ensure that no law providing for the acquisition by the States or any rights therein or for the modification of such rights is held void on the ground that it infringes any of the fundamental rights guaranteed by the Constitution. In 1951 some of the States introduced Bills and enacted laws providing for the abolition of the Zamindari System including the Bihar Land Reforms Act, 1950. All these were held void by the respective State High Courts on the ground that they contravened some of the provisions dealing with the fundamental rights. The Union Government was anxious to abolish the Zamindari system and to reform the entire system of land tenures as early as possible. For this purpose a need was felt for the amendment of the Constitution in a manner that would remove all constitutional obstacles from the path of legislatures providing for measures of land reform which have become long overdue in this country. These two articles were, therefore, incorporated in the Constitution by passing the First Amendment. The words "shall be deemed always to have been inserted" after Article 31, shows that Article 31(A) has been given retrospective effect. The result of this amendment is that any law dealing with acquisition of estates cannot be challenged even if it is grossly discriminatory in the matter of compensation or openly confiscatory, that is, which would not provide for any compensation at all. Article 31-A, thus, overrides the decision of the Patna High Court in *Kameshwar v. State of Bihar*, by making Article 31-A retrospective it validates the Bihar Land Reforms Act, 1950, *ab initio*. In order, therefore, to get the protection of article 31-A a law of state legislature must receive the assent of the President, after having been reserved under Article 200.

#### **Article 31-A As Amended By The Constitution (Fourth Amendment) Act, 1955**

We saw above that Article 31 was amended in order to enable the various States to abolish the Zamindari system and to make the necessary changes in the land tenures, which were

overdue. In order to make this legal, Article 31-A was inserted in the Constitution by the Constitution (First Amendment) Act, 1951. But the Zamindari abolition laws which came in our programme of social welfare legislation were attacked by the interests effected mainly with reference to Arts. 14, 19, and 31. In order to put an end to wasteful litigation Arts. 31-A and 31-B were inserted. Subsequent judicial decisions interpreting Arts. 14, 19 and 31 raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, for example, the following :—(a) After abolishing the Zamindari system, the next problem is land reform which means fixing the limits to the extent of agricultural land that can be owned or occupied by any person, the disposal of any excess land held by a person beyond the prescribed maximum and the modification of the rights of land owners and tenants in agricultural holdings.

(b) In the wider interest of our national economy, it is necessary that the State should have full control over the resources—mineral and oil—of the country. This would include in particular, the power to cancel or to modify the terms and conditions of prospecting licenses, mining leases and such other agreements.

(c) It is often necessary to take over under State management for a temporary period a commercial or industrial undertaking or any other property in the public interest or in order to secure better management of the undertaking or property. Laws providing for such temporary taking over by the State should be allowed by the Constitution.

(d) The Company Act, 1956, has incorporated provisions relating to the progressive elimination of the Managing Agency system, provisions for compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, and many others, all of which should be placed above challenge. It is accordingly proposed to extend the scope of the Article 31-A so as to cover all the above categories of social welfare legislation.

The effect of this amendment is that no law having all these objects shall be challenged on the ground that it contravenes the

provisions of Arts. 14, 19, or 31. But it should be noted that the *ryotwari* system of land tenure in other parts of the country are not brought within the scope of Article 31-A even after the Fourth Amendment of 1955. It should further be noted that this amendment does not affect Entry 42 of List III and if the law is one of 'acquisition or requisition' of property and yet offers 'no' compensation at all or lays down principles which, when carried out, result in the payment of no compensation at all, still holds good so long as the majority decisions in *State of Bihar v. Kameshwar* stands. It follows, therefore, that any law for acquisition or requisition must necessarily comply with the requirements of Entry 42 of List III, which requires that the law must lay down 'principles on which compensation' was to be determined. It follows, therefore, that under the Fourth Amendment, the position under Article 31-A(1)(a) is not different from that under Article 31(2), so far as the question of compensation is concerned. Even though mere adequacy of the compensation is not justiciable in cases coming under either Article 31, the law can be challenged as a fraud on the basis of Entry 42 of List III in cases under Article 31-A(1)(a) or 31-B as also under Article 31(2).

*Article 31-B.* Article 31-B has been inserted, *ex majore cautela* (by way of abundant caution), to save the particular Acts included in the Ninth Schedule of the Constitution, notwithstanding any decision of a Court or tribunal that any of these Acts are void for contravention of any fundamental right. This article is directly levelled against the decision in *Kameshwar v. State of Bihar* and other similar decisions, if any. However, Article 31-B reserves the power of a competent legislature to repeal or amend any of the Acts included in the Ninth Sch. which has been added to the Constitution including thirteen State Acts.

Article 31-B is not illustrative of the rule contained in Article 31-A, and is independent of it, and in itself validates certain acts specified in the Ninth Schedule. One of these Acts is the Madhya Pradesh Abolition of Proprietary Rights Act of 1951, the validity of which has been upheld by the Supreme Court, though no real or adequate compensation was provided for.

Articles 31-A and 31-B afford only limited protection against one ground of challenge, namely, that the law in question is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part. The Amendment Act thus provides no immunity from attacks based on the lack of legislative competence under Article 246, read with the Entries in List II or List III.

### **Right to Constitutional Remedies (Article 32)**

Article 32 is a unique article. Read with Art. 13 it provides for constitutional liberties. A person whose liberty is threatened can approach the Supreme Court whose five judges are ever vigilant to see that no citizen who knocks at their doors goes back without getting back his freedom. Thus to move the Supreme Court becomes in itself a fundamental right, that is, Article 32 is a fundamental right, that is, Article 32 is a fundamental right under which we have a right to move the Supreme Court which thus becomes a fundamental right. Under Article 226 the first right is to approach the High Court, but if that petition is rejected, the aggrieved person can go to Delhi to seek justice.

It follows, therefore, that so much of importance is attached to personal liberty and no Constitution in the world gives such a power to the Courts over such a vast area. But the Military and Armed Forces are debarred from the enjoyment of this fundamental right.

The sole object of Article 32 is the enforcement of the fundamental rights guaranteed by the Constitution, and no matter whether the necessity arises for the enforcement of fundamental rights out of an action of the executive or of the legislature. Thus article 32 is not directly concerned with the determination of the Constitutional validity of a particular legislative enactment. To make out a case under this Article one has to prove that any Act passed by the legislature affects or invades his fundamental rights guaranteed under the Constitution and for the enforcement of which he can seek appropriate writ or order. So even if the Court finds that the law must be held void because it contravenes some provisions of the Constitution, it cannot give that re-

lief under Article 32 unless it is satisfied that the right which is infringed is a fundamental right of the Petitioner.

*Clause (1) :* This clause guarantees the right to move the Supreme Court for the issue of such writs for the purpose of enforcement of the Fundamental Rights included in Part III. The effect of such a guarantee is that the power of the Court to issue writs cannot be suspended except as provided by Art. 359 read with clause (4) of Art. 32. Further, the power of the Supreme Court to issue these writs cannot be taken away by any legislation or by anything short of amendment of the Constitution and any law which tries to do this is void.

*Clause (2).* This clause gives a very wide jurisdiction to the Supreme Court for the enforcement of the Fundamental Rights. For this purpose the Supreme Court has a right to issue writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, as they are known in England. It also enables the Supreme Court to issue directions, orders, or even writs analogous to the above writs, or even to improve upon them so as to avoid their technical deficiencies in order to make them suitable to Indian conditions. "Article 32 gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases and the application of the petitioner cannot be thrown out simply on the ground that the proper writ has not been prayed for". (Mukherjee J. in *Chiranjit Lal's case*).

*Clause (3).* This clause enables Parliament to empower any Court, other than the Supreme Court, to issue writs, mentioned in clause (2), for the purpose of enforcement of the Fundamental Rights. These Courts are Courts other than High Courts, which have constitutional power to issue the writs under article 226, and include Courts established under Article 247.

*Clause (4).* This clause provides that the right to move the Supreme Court for the enforcement of the Fundamental Rights guaranteed by Art. 32(1) shall not be suspended except as provided by Art. 359 of this Constitution. It follows that the mode of suspension of this right is provided by Art. 359, which is an order of the President, subject to legislative approval, when a Proclamation of Emergency is in operation.



*Articles 32 and 132-134.* The important question to be decided here is whether an application under Art. 32 lies to quash a proceeding when regular appeal against the decision in that proceeding is pending before the Supreme Court under Arts. 132-134, has not been decided. In some cases (*Qasim Razvi v. State of Hyderabad*, 1953 and *Habeeb Mohamed v. State of Hyderabad*, 1953), the Supreme Court has heard the matter relating to Fundamental Rights under Art. 32 as a preliminary point in the appeal itself, and dismissed the application under Art. 32 upon the findings at that preliminary hearing.

*Articles 32 and 226.* Article 226 gives greater power to the High Courts for not only the issue of writs for the enforcement of the Fundamental Rights but also for other purposes.

With regard to the question whether a person can apply directly to the Supreme Court without first applying to the High Court, the Supreme Court has held that an application under article 32 lies in the first instance to the Supreme Court without first resorting to the High Court under Article 226. But whether an application which has been heard under Art. 226 and has been rejected by a High Court, can a further application lie under Article 32 is a question that has not been decided so far. The consensus of opinion is that an appeal to file an application under Art. 32, after it has been rejected under Art. 226, by a High Court, should only lie if the High Court allows it where an appeal is preferred against the order under Article 226. It means that leave to appeal to the Supreme Court against the decision of a High Court must be prayed for before the application can be made under Art. 32.

The Supreme Court has the power of issuing writs for the enforcement of Fundamental Rights only, but has no power to issue a writ for any 'other purpose.' Where, therefore, there is a ground of infringement of Fundamental Rights as well as on other grounds it may not be prudent for a Petitioner to apply directly to the Supreme Court. This is because the Supreme Court cannot give justice to the whole case and if it was found that no Fundamental Right was infringed, the Supreme Court would dismiss the application with the observation—"It is open to the Petitioner under Article 226 to approach the High Court

for a *mandamus* if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction."

**Law as to Restriction or suspension of Fundamental Rights : (Articles 33-34, 352, 359 & 368)**

*Article 33.* This article provides an exception to the provisions of Fundamental Rights contained in Part III of the Constitution and it provides that in case of the members of the Armed Forces or the Forces charged with the maintenance of Public Order, in order that proper discharge of their duty and maintenance of discipline amongst them are properly maintained, the fundamental rights can be modified by Parliament. If the Fundamental Rights of the Armed Personnel are curtailed by this Article, they have certain special privileges, for example, immunity from attachment, immunity from arrest for debt, immunity of persons attending Courts-martial from arrest, right to pay without deduction save those which are "authorised" by a Statute, priority in respect of litigation and postponement, in certain circumstances of civil and revenue proceedings in which an unrepresented Indian Soldier or Airman is a party, during 'war conditions' and six months thereafter, as also the law of limitation which is to be modified for this purpose. Under ordinary law they have the privileges of making a 'privileged will', which may be either made by word of mouth or by writing without complying with the formalities of signature and attestation required under Sections 65 and 66 of the Indian Succession Act, 1925. Further, as in England, the Armed Personnel are exempted from the liability of serving as jurors, unless made liable by any special law, for example section 320(g), Cr. P. Code, 1898.

*Article 34.* This article refers to martial law and Act of Indemnity. This article empowers Parliament to pass a law of Indemnity, legalising illegal acts done during the operation of martial law, or under any other emergency provision, which would otherwise have been wrongs under the ordinary law. But it should be remembered that the command and administration of a particular disturbed area is entirely given to the military and power of the civil authorities is superseded by military law and

procedure and offenders are tried by Courts-Martial. In International law, martial law means the law administered by a Military Commander in occupied enemy territory in times of war. But the present article has no such reference and only refers to maintenance or restoration of law in any area within the territory of India.

**Article 35.** This article deals with the power of Parliament to give effect to the provisions of Part III, that is Fundamental Rights and also lays down that the Legislature of a State shall not have power to make laws relating to any of the matters which under clause (3) of article 16, clause (3) of the Article 32, Article 33 and 34 may be provided for by the law made by the Parliament; and for prescribing punishment for those Acts which are declared to be offences under Part III of the Constitution.

In this Article, the expression 'law in force', has the same meaning as in Article 372. It means that this clause simply validates any law enforced at the date of commencement of the Constitution which may relate to any of the matters referred to in clause (a) of Article 35, until Parliament enters upon the field to legislate.

By reason of this provision, the validity of laws in force which deal with matters specified in Clause (i) of the present article cannot be challenged on the ground that it violates any other provision of Part III and is, therefore, void under Art. 13.

### **Suspension of Fundamental Rights (Art. 259)**

Where a Proclamation of Emergency is in operation, the President may declare that the right to move any Court for the enforcement of rights conferred by this Part and all proceedings pending in any Court for the enforcement of such rights shall remain suspended for the period during which the Proclamation is in force. Even such order shall be laid before each House of Parliament.

We have seen that under Articles 33 and 34 Parliament has been authorised by the Constitution to restrict or abrogate the fundamental rights in their application to the Armed Forces or

Forces charged with the maintenance of public order. This power has been given in order to ensure the proper discharge of their duties by the Armed Forces. Further, Parliament has also been given the power to indemnify any person in the service of the State for acts done in any area where Martial Law was in force in connection with the maintenance or restoration of order.

Under Art. 352, when a Proclamation of Emergency has been issued by the President the fundamental rights conferred on citizens by article 19 will remain suspended while the Proclamation is in operation. Under Art. 358 the rights suspended are : freedom of expression, movement, assembly and association as well as freedom to hold and acquire and dispose of property. From this it follows that the constitution is not something unchangeable, for it can be amended by following certain procedure. All fundamental rights can, therefore, be modified by amending the constitution.

### **General Remarks on Fundamental Rights in our Constitution**

The study of fundamental rights would show that these rights could have been more scientifically arranged. Of course, not all provisions in Part III refer to fundamental rights. But the basic idea of equality and dignity of citizens is recognised, subject to the supreme needs and safety of the State. Some clauses are loosely worded, but the judiciary will try and integrate them and then it will become a single code. The American clauses 'Due Process' and 'Political Powers' are crystallised in Articles 19 and 31 of *our* Constitution which shows the desire on the part of the framers to protect the new and infant democracy. The working so far shows that the critics are quite alive to the effective enforcement of fundamental rights and if there is encroachment or supposed encroachment, one can easily rush to the Supreme Court, which has so far readily and speedily given immediate relief. This healthy attitude has considerably speeded up the growth of democracy and our experience of the last six years of the working of the constitution has amply shown that by insertion of fundamental rights something significant and

substantial has been achieved and guaranteed. These rights within limits are real and protection given is effective.

It will also be seen that some of the provisions in Part III are in the nature of 'constitutional limitations', that is, prohibitions upon the authority of the State, for example, prohibition of discrimination or of denial of equal protection, abolition of titles. These provisions are binding upon the State without any exception and any act of the State either legislative or executive which contravenes any of these provisions will be altogether void, to the extent of such contravention. (Art. 13(2)).

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## CHAPTER 3

### DIRECTIVE PRINCIPLES OF STATE POLICY

#### PART IV ; ARTICLES 37-51 & 355

##### The nature of directive principles

The directive principles are like the 'Instrument of Instructions' which were issued to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Directive principles are, therefore, 'Instrument of Instructions' as they are instructions to the legislature and the executive. Such a thing is always to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise. The Directive Principles of State Policy are intended to give an indication of the policy which the Union and the State ought to follow. They are directions to the State to meet those social, economic and cultural reforms which the framers of the constitution looked upon as the ideals for a new social, political and economic order, but to which they could not give legal effect in the frame work of the organic law of the land itself.

*Legal Force of Directive Principles :* These principles can be used for the purpose of private and political criticism but they confer no legal rights and create no legal remedies. They are a good guide, but they cannot be enforced. They are mere paper declarations and sometimes one feels that without the machinery for the enforcement of certain rights, the Directive Principles have no practical value. They are not to be enforceable by any force and being excluded from the purview of the Court they are not justiciable and this is made quite clear by Article 37. They differ from fundamental rights from this point of view because fundamental rights are meant to be en-

forced by legal action as laid down in Art. 32. In case of conflict between the two, the latter (fundamental rights) must prevail.

*Subjects covered under Directive Principles :* These Directive Principles cover a wide range of subjects. The general duty of the State is defined in Article 38 which is to secure and protect the social order in which justice, (social, economic and political) shall inform all the institutions of national life. This is worked out in Art. 39. Article 40 directs the State to organise village panchayats. Article 41 provides that the State shall, within the limitations of its economic capacity and development make effective provisions for the right to work, of education and of public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want. Just and humane conditions, maternity relief, a living wage, decent standards of life, full enjoyment of leisure, uniform civil code, free primary education, raising of the standard of life, improvement of public health, the preservation of National Monuments and International peace and security are among the other provisions included in this Part. It is also provided that the State shall promote with special care the educational and economic interests of the weaker sections, and in particular of the Scheduled Castes. It is also enjoins that the State may organise agriculture and animal husbandry on modern and scientific lines and take such steps for improving and preserving the breeds and prohibiting the slaughter of cows and calves and other milch cattle.

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## CHAPTER 4

### GOVERNMENT AND ORGANIZATION UNDER THE CONSTITUTION

#### Legal Aspects of the Governmental Structure

The Republic of India established by the constitution is a territorial community and is a Union of 28 Constituent States. These States are specified in Part A, B and C, having regard to their status before 26-1-1950 and political conditions therein and the constitutional machinery existing at that time. Part A States have Governors, Part B States, which are old Native States are grouped together as Part A States but having Rajpramukhs as the heads of these States. For ten years the Part B States are under the general control of the Union Government, except Mysore. The Constitutional machinery in Part A and B States is the same. Part C States are old Chief Commissioners' States which have a simpler representative form of Government. All this distribution is too prosaic and it would have been possible to have a more dignified classification.

The Union of India is an organic and dissoluble territory. Provision has been made to reorganise the States and creation of new States. Andhra was created on 1-10-1953 and after that from November, 1956, we are having a complete reshuffling of the boundaries of the States.

Another remarkable feature of our constitution is that we have single citizenship and the constitution defines this at the commencement and in doing so has laid down *three* distinct categories, namely; 1. all those who were domiciled in India on 26-1-1950 for a number of years; 2. all those who have migrated from Pakistan; and 3. all those who have gone abroad for various reasons, in which case applications are to be made to the respective Consular Offices for getting registered as Indians.



The provisions in Articles 5 and 6 regarding persons migrating from Pakistan are very peculiar. Partition of India is the price of Independence and what is more peculiar is that people overnight have become foreigners. Problems of citizenship are real headaches, especially when no law has yet been enacted in this direction. The Draft Bill is for the consideration of the Parliament.

### Structure—The Theory of Separation of Powers

Ever since Aristotle, governmental functions have been divided into three, the legislative, the executive and the judicial functions. In some countries there is a rigid separation of powers of these three departments and as a result, the consequences are many and serious as can be seen from the American Constitution. In a democratic set up of a Constitution all these three functions are recognised but there is no rigid separation except that of the judiciary which is made independent of control of either the Executive or the Legislature. In India we have a fusion of the Legislature and the Executive but independence of the Judiciary is maintained upto a point. India being a federation has parallel governments functioning, each having three branches at the Centre and the States, that is double government of three different categories, that is, Union Executive, Legislature and the Judiciary and the State Executive, Legislature and Judiciary. All this completes the whole structure of the Indian Union, which is thus quite complicated.

The most important part from the *legal point of view* is the principle underlying the Executive at the Centre and the States. The Executive head at both places has some power and functions and position. Even with regard to Legislature the differences are minor. The President is the Union Executive and he is helped by the Council of Ministers. There is a good deal of misunderstanding regarding the position of the President. Our Constitution is a Republic, and the President is elected. The President is the Head of the Indian Union but he is not the head of the Government. Executive authority is vested in him and he is elected by an Electoral College. All contracts and Orders are made and passed in his name, that is, every thing is

done in the name of the President, but he has no powers and occupies the same position as the Constitutional Monarch of England. In England the King is the symbol of the unity of the nation.

The President is aided and guided by the Council of Ministers. Vast powers legally vested in him are exercised by his Ministers. In case of any deadlock between public opinion on one side and the actions of the Ministers on the other, the President *on his own* can dissolve the Parliament and dismiss the Ministers. But the political soil in India is new and the seeds of democracy have been sown of late only.

The Prime Minister keeps the President informed of what goes on in the Parliament. All the provisions of the British Constitution have been incorporated in framing the Articles regarding the powers and position of Indian President. There is also a provision for a Vice-President.

Every federation has two Houses — one representing the people as a whole which is elected by the people and another is the Upper House which is also elected. The powers of both these Houses are coordinate except in financial matters. The essence of federalism, namely, the clear cut distinction between the Executive, the Legislature and the Judiciary is kept up to a certain extent. The Supreme Court interprets the constitution and its jurisdiction is the largest in the world. If there is miscarriage of justice in any part of this country, the Supreme Court has power to review the same. The provision, therefore, in Article 136 is most salutary and beneficent. Any citizen can go to the Supreme Court if his fundamental rights are affected. There is the Advisory or Consultative jurisdiction of the Supreme Court.

The Auditor-General is the watchdog of the finance of the Government of India. Every pie spent by the Union and State Governments has got to be accounted for and sanctioned by the legislature in advance. Though the Auditor-General's examinations are in the form of post-mortems, he points out very important and serious discrepancies.

The Centre has a bicameral legislature and some States have also the same structure while some have only one. A move was

made in Bombay to abolish the Upper House, but it failed to materialise.

Every State has a High Court and Subordinate Courts which are independent and integrated. The jurisdiction of the High Court is not defined in the Constitution. There are the Original, Appellate and Admiralty jurisdictions of the High Court. Under Article 226 every High Court is authorised to issue writs. It is the greatest step taken by our Constitution-makers to safeguard the rights of the citizens and to intervene wherever there is an abuse of power or whenever principles of natural justice are violated.

The provisions of Public Service Commission are healthy and salutary. Both the Union and the States Public Service Commissions are independent and impartial thus ensuring best recruitments to different services.

The Election Commissioner is in charge of adult franchise and electoral rolls. He is also independent. This was necessary because India was embarking on a bold step. What England took a hundred years, Indians got it overnight. All citizens over the age of 21 were entitled to be enrolled and have a vote. India took a great step in introducing adult franchise and conducted her elections successfully and thereby gained the admiration of the whole world. It was democracy with a vengeance and was the greatest step in parliamentary democracy ever taken by any country in the world, especially when we realise that eighty-five percent of the populace were absolutely illiterate. The whole world gazed and looked with astonishment at the first General Elections ever to be held on so vast a scale over such a wide territory. Some were sceptical, some were sure that the experiment will fail, but to the surprise and may be to the discomfiture of others, elections were conducted peacefully and efficiently and the whole world was in praise. Parliamentary democracy was successful which was a clear testimony of the sound and robust commonsense of the Indian masses. The foundations of Parliamentary democracy were well laid and it is our duty now to maintain and develop this further.

Another important feature is of the *language*. Excepting

Canada, Switzerland and Russia there are no other constitutions in the world where separate provisions for language are included in the Constitutions. In India this question is of paramount importance. Macaulay unwittingly introduced the English language for the purpose of manufacturing clerks in order to carry on the administration of the Company efficiently, but this only unified India. Only about two percent of the people in India can speak the English language and yet the sense of unity is felt. So great is this unity that there are cries from different nooks and corners of this country for the retention of the English language as a medium of instruction in Colleges and Universities. There are fourteen languages and two hundred dialects being spoken in India. We cannot create a nation without one common language and the English language cannot be our choice. Hindi which is spoken by the largest number of people must be our *lingua franca*. Of course, there are objections from Bengal and greater objections from the South. Our President and other high officials have assured them all that there would be no imposition from above, to learn and adopt Hindi language as a medium of instruction. We must, therefore, go slowly no doubt, but we must build it some day. The provisions in our constitution are sensible and are in the nature of a compromise.

There are also special provisions for Scheduled Castes and Bankward Tribes and special officers are appointed to look after the welfare of these people.

Our conclusion is that the success of Parliamentary democracy will depend on many factors. What is important is the spirit in which it is worked and not the procedure. Democracy, or as a matter of fact, successful democracy as we know it, is not necessarily government by a majority. But in no case should the system be complicated. Democracy at the bottom includes the attitude of mind towards many aspects and phases of life. It makes it possible for that attitude of mind which achieves true results through the spirit of tolerance, an inborn dislike of oppression, belief in compromise in all important matters, a knowledge that excessive use of a majority will defeat its own ends, resistance against corruption and a strong and sturdy public opinion—

all these attitudes are very important for the working of democratic institutions. Continued existence of democratic process will depend on the efficient machinery and the ability to work the same so as to enable the aspirations of the people and sense of justice to work. If this sense of justice, this healthy environment, this hopeful spirit are denied or violated, then we will have nothing but a reign of terror or oppression in which the lives of citizens will always be at stake.

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## CHAPTER 5

### THE DISTRIBUTION OF POWERS (PART V)

#### Articles 52-151

The distribution of powers forms the core of the Indian Constitution. Executive authority in a federation is co-extensive with legislative competence and hence provisions in the Constitution are there for spheres of activities of the Union and Constituent units. In India we had a peculiar condition prevailing before 1947. In the United States, the States were not prepared to surrender their powers and hence their powers remained untouched. The Canadians had the experience of the Americans before them and they therefore suggested that the Centre should have more power and hence it is a different Federation from the American pattern. In Canada, the Dominion and the Provinces have concurrent powers. Australia is also affected by the United States and we have there a short list of concurrent powers, while other powers are reserved for the States. In India we had a federal constitution, wherein the residuary powers were mentioned in the 1935 Act. At the Round Table Conference they had proposed to have one list, but they ended with three lists on account of unbridgeable differences between the Hindus and Moslems. This accounts for the distribution of legislative powers in the Federation of 1935, which was a result of political conditions.

After 1947, the Constituent Assembly was free to consider the growing needs of India. Strangely, the basis adopted by *our* Constitution-makers is the same as the 1935 Act, which was evolved in the then context. The Lists are enlarged so as to assimilate planning, social and economic factors. In order to make the machinery of governmental powers as effective as the unitary government, there are three Lists drawn up which are quite elaborate. The State Legislatures have exhaustive powers and in fact it is the only Constitution in the world

which has such three detailed Constitutional Lists. The total number of matters dealt with under the 1935 Act were 153; that is, the Federal List contained 61 items, the Provincial List contained 26, and the Concurrent List had 31 items. Under *our* Constitution there are 210 items dealt with under the three Lists. The Union List has 97 matters, the State List 66 matters and the Concurrent List has 47 matters. Thus by enlarging the Union List, the sphere of Parliament and the Union Central Government is enlarged. The framers have tried to work out the categories with exhaustive detailed enumeration, thus eliminating the limitations imposed previously. The Centre was sufficiently powerful and one list was quite sufficient leaving the residuary powers resting in the Centre. The framers could have thought of a shorter list instead of improving upon the Constitution of 1935.

Considering the theory of separation of powers we have already seen that the theory of separation of powers, as it was originally enunciated by Montesquieu could not be applied rigidly. The experience of the United States is a glaring example of the impossibility of having a rigid *personal* separation of powers where the President has got legislative powers in his right to send messages to Congress and the right to veto, while Congress has the judicial power of trying impeachments and the Senate participates in the executive power in treaty-making and in making appointments. In modern practice, therefore, the theory has come to mean an *organic* separation of functions, namely, that one organ of government should not usurp the functions belonging to another organ. But even here any rigid separation is impracticable.

In our Constitution though the Supreme Court, in the *Delhi Laws Act case* agreed that our Constitution does not vest the legislative and judicial powers in the Legislative and the Judiciary in so many words, the majority in effect imported the essence of the modern doctrine of Separation of Powers, applying the doctrines of the constitutional limitation and trust. *Our* Constitution is, therefore different from the American and Australian Constitutions in so far as there is no attempt at any express introduction of the doctrine of separation of powers, by vesting the

executive, legislative and judicial powers in different organs. The executive power is vested in the President under Art. 53(1), but the legislative and judicial functions are not vested in any person or body. It is clear, therefore, that there was no intention on the part of *our* framers of introducing any rigid application of the doctrine of separation of powers. It follows therefore, that rules contrary to principles of English jurisprudence, relating to forgoing matters, will prevail under *our* Constitution. Under the English system the Legislature may validly *annul* judicial decisions by directing that they be reopened and retried on a different interpretation of law. It may also directly pass declaratory Acts laying down propositions, which in effect would satisfy the decisions of the Courts. We have seen above that in *Bowles v. Bank of England*, it was decided following the decision in *Stockdale v. Hansard*, that it was unlawful for the Government to collect taxes under the authority of the Resolutions of the Committee of Ways and Means (Resolution of either House of Parliament is not law). But the Provisional Collection of Taxes Act, 1913, nullified this decision by giving statutory force, for a limited period to resolutions of the Committees of Ways and Means.

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## CHAPTER 6

### THE UNION EXECUTIVE

(Articles 52-78, 85-87)

Under this head we have to discuss the law relating to—

- (1) The President of India ;
- (2) The Vice-President of India ;
- (3) Council of Ministers ; and
- (4) The Attorney-General of India.

#### (1) The President of India : (Arts. 52-62 and 173)

The President is the Supreme Executive Authority of the Union. He occupies the same position as the King under the English Constitution. He is the *head of the State but not of the Executive*. He *represents* the nation but does not rule the nation. He is the symbol of the Nation. The Constitution provides by Article 52 that there shall be a President of India. As compared to the Indian President, the American President is not only the head of the political system, but also of the national life; not a mere party chief but “the majesty of the people incarnate.” He combines in himself the two offices of the Crown and Prime Minister, and in the words of Bagehot, the ‘dignified’ as well as the ‘efficient’ functions. His powers are becoming wider and wider in the same sense as the Federal Government is gaining in strength as against the States, owing to the influence of external forces such as war, economic crisis and others. He is regarded as the ‘foremost ruler of the world’, but the principles of American government have prevented him from becoming a despot. As Laski observes in his *American Presidency*, “The President of the United States is both more or less than a King ; he is also both more or less than a Prime Minister. Since the Cabinet is nothing more than the President’s Advisory Council, all the

above powers are to be exercised by the President on his sole responsibility and the only person responsibly charged with thinking and planning in terms of the whole Union is the President."

The President of the Fourth French Republic neither reigns nor governs. He can act through the joint counter-signature of an individual Minister as well as that of the President of the Council of Ministers (Art. 38). Being elected by the Legislature and having no direct contact with the people he has no power of veto over legislation (Art. 36). Even the power of dissolution is hedged in with certain conditions (Art. 51). The reason for the weakening of powers of the President is because in the new frame-work of the Constitution of the Fourth Republic, his powers were transferred to the President of Council of Ministers, who has now become more powerful than even the Prime Minister of England. The President of the Council of Ministers has very wide and extensive powers, for example, proposing legislation to the Chamber (Art. 14). The only scope for the President of the Republic to influence the decisions of his Ministers is when, under Art. 32 he has a right to preside over the Council of Ministers. It, therefore, depends upon the personality of the President of the Republic to influence French politics within the scope given to him under the Constitution.

### **Position of the President under the Indian Constitution**

The framers of *our* Constitution in their anxiety of adopting the best features of the Constitutions of other countries have set up a curious combination of the Presidential and Parliamentary systems. They have outlined the position of the President of India on the Irish model, namely, an elected President, acting under the advice of his Ministers who are responsible to the Legislature. On this basis the President in India is not the 'Head of the State', nor the 'repository of all powers of the State' as the King of England, nor is he 'the majesty of the people incarnate' as the American President is described. *Our* President exercises his powers given to him by the Constitution, and *in accordance with the Constitution*, with the aid and advice of the Council of Ministers. [Art. 74(1)]. He is not vested with any *discretionary* power as the Irish President is vested with

‘an absolute discretion’ to act, under Art. 13(2) and has also the right to refuse a dissolution of the Legislature to a defeated Ministry.

The Indian President differs from the Irish President in the sense that the former, like the King of England, has a right to be informed by the Council of Ministers and to call for any information that he may require in connection with the administration of the Union and proposals for legislation [Art. 78(b)]. In the limited capacity even the English King performs many important functions, e.g., he can be an excellent impartial mediator in political issues, he can meet the leaders of the Opposition and even give the Cabinet his views, but it rests with the Cabinet to accept all this. The President of India has a very important power under Art. 78(c), which enables the President to exercise an effective supervision of the Cabinet without having a seat therein and it enhances the value of the President as the constitutional head. From the point of view of *our* constitution, there is no provision which would compel the President to act always according to the advice of his Ministers and there is no rule which would compel him to act only under the counter-signature of a Minister. It is evident, therefore, that the Indian President is not an exact replica of the head of the Executive of any other country, but combines in him some of the best features of all of them.

Under Articles 153 and 238(1) similar provisions are in the Constitution with regard to the Heads of the States in Parts A and B.

### **Powers of the President**

*Executive Power* : The Executive power may be defined as that authority within the State which administers the law, carries on the business of Government and maintains order within, and security from without the State.” (Wynes, *Legislative and Executive Powers in Australia*). The various powers that can thus be included within the comprehensive expression “executive power,” in a modern State have been grouped together under the following heads :

I. *The Administrative Power* includes the power to appoint and remove the high officials of the State and other administrative commissions. He has thus the power, under *our* constitution, to appoint, (i) the Prime Minister of India and other Ministers of the Union (Art. 74); (ii) The Attorney-General and the Comptroller and the Auditor-General of India (Arts. 76 & 148); (iii) The Judges of the Supreme Court and High Courts of the States (Arts. 124 & 217); (iv) The Governor of a State (Art. 155); (v) An Inter-State Council (Art. 263); (vi) The Union Public Service Commission (Art. 316); (vii) Election Commissioners (Art. 324(2)); (viii) Special Officer for Scheduled Castes and Tribes (Art. 338(i)); and (ix) A Commission on Language (Art. 344(i)). The President has also the power to remove some of the officers as given to him under Articles 75(2); 76(4) and 156(1).

II. *The Military Power*, that is, the organization of the armed forces and the conduct of war.

III. *The Diplomatic Power*, that is, the conduct of foreign affairs. Being a very wide subject it is sometimes considered identical with the power over foreign or external affairs, which comprises 'all matters which bring the Union into relation with any foreign country.' The Legislature has no power to take initiative in such matters for the task of negotiating treaties and agreements with other countries, subject to ratification by Parliament, belongs to the President and his Ministers.

IV. *Legislative Power*, that is, the summoning, prorogation, etc. of the Legislature. The President has also the right to address and to send messages (Art. 86); the power to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity to take action upon them, such as the Annual Financial Statement and the report of the Auditor-General of India relating to the accounts of the Government of India (Art. 151(1)); the power of sanction for introduction of certain Legislative measures such as, State boundaries (Art. 3); Money Bills (Art. 117); Bills involving expenditure (Art. 117(3)); Bills affecting taxation in which the States are interested (Art. 274(1)); Assent to Legislation and the po-

wer to veto Union Bills (Art. 111); Power to veto reserved State Bills (Art. 201) and the power to legislate by Ordinances during recess of Parliament (Art. 123).

*V. Judicial Power*, that is, the granting of pardons, reprieves, etc. to persons convicted of crime. The object of this power is to correct possible judicial errors, for no human judgment can be perfect. It is 'executive' power and its exercise shall not be subject to either legislative or judicial control. But like all other powers, this power also must be exercised on the advice of his Minister, and in all probability the opinion of the Court which has passed the sentence will be consulted. (Refer sec. 401(2) of the Cr. P. Code).

The pardoning power is possessed by the President as also by the State Governors and Rajpramukhs (Art. 161). But the power of granting pardon in case of sentence of death is vested in the President alone.

*Kinds of Pardons* : A pardon may be full, limited or conditional.

*Reprieve* : It means the stay of execution of a sentence or of the enforcement of a penalty. Under Sec. 382 of the Cr. P.C., a High Court may stay the execution of a death sentence.

*Respite* : It means awarding a lesser sentence in place of the penalty prescribed under law.

*Remission* : Means a reduction in the quantum of a sentence without changing its character as one year may be reduced to six months. Both the Central and the State Governments possess this power under sec. 401 of Cr. P.C.

*Commutation* : Commutation of a sentence means a change to a lighter penalty of a different form, as death sentence is commuted to transportation for life. (Secs. 54, 55, I.P.C.; and section 402 of Cr. P.C.).

*Power to consult the Supreme Court* (Art. 143) : As the executive head of the Union, the President can refer any question of *law or fact* as has arisen or is likely to arise, for the "opinion" and report of the Supreme Court. The questions re-

ferred to must be of such public importance as it is expedient to obtain the opinion of the Supreme Court upon it. This power to consult the Supreme Court is known as the Consultative Power of the President (Arts. 143 and 145).

VI. *Emergency Powers* (Art. 352-360 & 365): In times of crisis the President has *extraordinary powers* to deal with an emergency, namely, external aggression or internal disturbance by reason of which the security of the country is in danger or if any part is threatened, or the failure of the constitutional machinery in a State owing to some other cause, or, a financial crisis.

VII. *Financial Powers*: The President has been authorised to lay before Parliament at the beginning of every financial year a financial statement showing the estimated receipts and expenditure of the Union for that year. No demand for grant can be made except on the recommendation of the President.

The President has been given power to distribute between the Union and the States shares from the Income tax, and to assign to Assam, Bihar, Orissa and West Bengal grant-in-aid in lieu of their shares from jute export duty. The President is also empowered to set up a Finance Commission.

VIII. *Miscellaneous Powers* (Arts 391-392): These powers may be said to be residuary in nature, and which are required to be vested in some authority. The President, may, for the purpose of removing any difficulty, by an order direct that this constitution shall have effect subject to such adaptations whether by way of modification, addition or omission, as he may deem to be necessary and expedient. Every order so made shall be laid before the Parliament (Art. 392).

Under this the rule-making powers of the President must be mentioned. The President shall make rules as to how orders and instruments made by the Government of India, in his name, shall be authenticated, and how the business of the Government of India shall be carried on and allocated among different Ministers [Art. 77(2) & (3)]. The President, in consultation with the Chairman of the Council of States and the Speakers of the House of People, make rules as to the procedure with res-

pect to joint sittings of, and communications between the two Houses (Art. 118(3)). The President shall specify the period at the expiration of which a member's seat in Parliament shall fall vacant if he does not resign his seat in the Legislature of the State, in case of a double membership (Article 101(3)). The President's approval shall be required for rules made by the Supreme Court for regulating the practice and procedure of that Court (Art. 145). The President shall make regulations determining the number of members of the Union Public Service Commission, the tenure and condition of service and other similar provisions as regards the staff of the Commission (Art. 118).

The Constitution also confers upon the President certain 'interim' powers to be exercised by him so long as Parliament does not elect to *occupy* those fields, such as, Grants-in-aid to the States in need of assistance. Such a grant is sanctioned by the President until Parliament makes the necessary provisions. He also assigns the percentage of the proceed of income-tax among certain States, until a fresh basis is decided on the recommendation of the Finance Commission. The President also makes rules regulating the recruitment and conditions of service of persons employed in the Union, until Parliament elects to legislate on this matter.

### **The Privileges of the President (Art. 361)**

Under Article 361 the privileges of the President are four in number.

1. Article 361(1). He shall not be answerable to any Court for the exercise and performance of the power and duties of his office or for any act done by him in the exercise and performance of those powers and duties. However, under Article 61, the conduct of the President may be brought under review by any Court, Tribunal or Body appointed by either House of Parliament for investigation of a charge.

2. Article 361(2). No criminal proceedings whatever shall be instituted or continued against the President in any Court during the term of his office.

3. Article 361(3). No process of the arrest or the imprisonment of the President shall issue from any Court during his term of office.

4. Article 361(4). No civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done, by him in his personal capacity, whether before or after he entered upon his office as President until the expiration of two months next after notice in writing has been delivered to the President stating, (i) the nature of the proceedings, (ii) the cause of the action therefor, (iii) the name, description and place of residence of the party by whom such proceedings are to be instituted and, (iv) the relief which he claims.

#### **Rules as to the Election of the President (Arts. 54-55, 58-59 & 71)**

The President shall be elected by the members of an Electoral College consisting of (a) the elected members of both Houses of Parliament; and (b) the elected members of the Legislative Assemblies of the States. (Art. 54).

In the United States under the 12th Amendment of 1804 the election of the President is made indirectly by an Electoral College. The electors meet in their respective States and vote by ballot. The person securing the greatest number of votes is declared as the President of the United States. The Constitution, however, does not lay down any rule as to how the electors are to be chosen, but by common usage electors have come to be chosen by *popular election*.

The Constitution of Eire, 1937, by Article 12(2) lays down "the President shall be elected by direct vote of the people." (ii) Every citizen who has the right to vote at an election for members of the Dail Eirean shall have the right to vote at an election for the President, (iii) the voting shall be by secret ballot and on the system of proportional representation by means of a single transferable vote.

The French Constitution of 1946, by Article 29 provides



that "the President of the Republic shall be elected by the Parliament."

In India the election of the President is by indirect election, but the mode is different from the systems of elections described above. As far as possible there shall be uniformity in the scale of representation of the different States at the election of the President. For the purpose of securing this uniformity the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to shall be determined in the following way :

(a) Each elected member of the Legislative Assembly shall have as many votes as there are multiples of one thousand in a quotient obtained by dividing the population of the State by the total number of elected members;

(b) If after taking the said multiple the remainder is not less than 500 than the vote of each member shall be increased by one;

(c) Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the Legislative Assemblies of the States by the total number of elected members of both the Houses of Parliament, fractions exceeding half are counted as one.

His election is to be held in accordance with the system of proportional representation by means of a single transferable vote and the voting at such an election shall be by *secret ballot*.

*Article 56 :* This article lays down the normal term of office of the President, which is five years. But it may terminate either by resignation in writing addressed to the Vice-President who communicates the same to the Speaker of the House of the people or by removal for violation of the Constitution, by the process of impeachment as provided under Art. 61. The Constitution, however, does not define the term 'impeachment'. Article II. Sec. 4 of the United States Constitution lays down that

impeachment lies for 'treason, bribery or other high crimes and misdemeanours.' In the Constitution of Eire, 'misbehaviour' and in the Burmese Constitution 'gross misconduct', are further two grounds for the removal of the President under their respective Constitutions. In India clause (3) of Article 61, read with the Proviso to Article 361(1) lays down that when a charge of impeachment is preferred by either House of Parliament, it is the other House that investigates the charge. In making such an investigation it may delegate the work of investigation to any Court or body or tribunal appointed by the House for that purpose. But the removal of the President will require the resolution of that House which preferred the charge under sub-clause (4) of Article 61.

### **Qualifications for Election as a President (Arts. 58, 85, 71(1) & (2))**

Article 58 read with Article 85 lays down the qualifications of the President. He must have completed the age of 35 years and must be a citizen of India and must be properly qualified for election as a member of the House of the People. A person holding any office of profit is ineligible for election as the President of India. A person is not deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uparajpramukh of any State or a Minister either of the Union or of any State. After his election the President vacates his seat either of the House of Parliament or of a House of Legislature of any State.

Under Article 71(1) all doubts and disputes arising out of or in connection with the election of a President shall be enquired into and decided by the Supreme Court whose decision shall be final.

If the Supreme Court declares the election of a person as the President to be void, all acts done by him in the exercise and performance of the powers and duties of the office of President on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration (Art. 71(2)).

### Procedure for Impeachment of the President (Arts. 61 and 361(1))

There are three steps in the procedure for impeachment of the President. When a President is to be impeached for *violation of the Constitution*, the following procedure is to be followed :

(1) The charge shall be preferred by either House of Parliament. But no such charge shall be preferred unless—

(a) the proposal to prefer such a charge is contained in a resolution which has been moved after at least fourteen days' notice in writing, signed by not less than one-fourth of the total number of members of the House, has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the *total membership of the House* (Art. 61(2)).

(2) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge and the President shall have the right to be represented at such investigation (Art. 61(3)).

Under Art. 361(1) the conduct of the President may be brought under review by any Court, tribunal or body appointed by or designated by either House of Parliament for the investigation of a charge under Article 61.

(3) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated declaring that the charge preferred against the President has been sustained, such a resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed : (Art. 61(4)).

### The Vice-President of India (Arts. 63-71)

After the President, the Vice-President is the highest dignitary of India. Articles 63-64 lay down that there shall be a Vice-President who shall be ex-officio Chairman of the Council

of States. He will act as President in the event of a vacancy in the office of the President by death, resignation or removal and in the absence or illness of the President : (Art. 65).

He is elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of a single transferable vote. On his assumption of office as Vice-President, he shall vacate his seat of either House of Parliament or of a House of Legislature of any State. Article 67 lays down that unless he resigns or is removed from office, the term of office of a Vice-President shall be five years, and he continues to hold the office until his successor is appointed, even though his term of his office has expired.

A person in order to be eligible for election as Vice-President shall be a citizen of India, having completed the age of 35 years and is qualified for election as member of the Council of States. A person holding any office of profit under the Government of India or the Government of any State shall not be eligible as Vice-President, [Art. 66(3)]. All doubts and disputes arising out of or in connection with the election of the Vice-President shall be enquired into and decided by the Supreme Court whose decision shall be final. If the election is held void, then any act done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated because by reason of that declaration [Art. 71(2)].

He may be removed from his office by a resolution of the Council of States, passed by a majority of all the then members of the Council and agreed to by the House of the People. But in order to move such a resolution at least 14 days' notice shall be given of the intention to move such a resolution. However, he may by writing under his hand addressed to the President resign his office.

### **The Council of Ministers (Arts. 74-75, 78 & Schedule 3)**

Under the Constitution the Council of Ministers is enjoined to aid and advise the President in the exercise of his functions.

The question is whether the President is always bound to accept the advice of his Ministers. If he does so then he is a mere nominal executive head, a figure head. But the President in actual practice enjoys some real power. This is because the Constitution has not laid down that the President shall always accept the advice of his Ministers. The question is to what extent can the President exercise this power? Now, in the ordinary day to day administration, he would act according to the advice of his Ministers. It is only in extraordinary situations that the President may not follow the advice of his Ministers if he thinks that to be in the best interests of the nation. If the President misuses his powers then he can be impeached for the violation of the Constitution. But it is doubtful whether refusal to follow ministerial advice can amount to violation of the Constitution. "Although there is no specific provision in the Constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which the King in England always acted on the advice of his ministers, would also be established in this country and the President would become a Constitutional President in all matters." (Dr. Rajendra Prasad). It follows, therefore, that the object of the framers of our Constitution was to make the President a constitutional and formal head of the executive like the English King, but this object has not been fulfilled in the true sense of the word. This is because all the principles upon which a cabinet government rests have not been embodied in our Constitution and even on some fundamental points, the framers of the Constitution have been obliged to leave the matters to conventions and usage. Under Art. 77(2) the President himself makes rules as to the mode in which his orders and instruments shall be authenticated. Further, in India, the Ministers shall have no *legal* responsibility for the acts of the President. But the Government itself is liable to be sued (under Art. 361) for acts of the President which are duly made and countersigned. The legal responsibility of a minister is, therefore, not necessary in India to give the subject his remedy for illegal acts done in the name of the President. Even under Article 77(3) the President has power to make his rules or revise them under the advice of each new Prime Minister, but this does not necessarily imply that the

President shall have absolute powers in this respect. This is borne out by the fact that Art. 74(1) lays down that 'there shall be a Council of Ministers,' it follows that the President cannot help doing without Ministers as soon as a Cabinet resigns, as there is no express provision in our Constitution, corresponding to Art. 28(1) of the Constitution of Eire, which lays down that any Cabinet that resigns must carry on until their successors are appointed. Even the grammatical interpretation of Art. 74(1) shows that the President in the exercise of his powers may as a matter of constitutional usage request the ministry to continue after its resignation till its successor is appointed.

As regards his choice of the Prime Minister, the President has enough of discretion and may appoint any person whom he likes. But the usual practice is that he appoints that person who commands the confidence of the House of the People [Art. 75(3)]. But any person who is not a member of the Parliament may remain a minister for six months [Art. 75(5)] and the President has the power not to summon Parliament within six months from the date of its last sitting [Art. 85(1)]. So, there is enough scope for the President to appoint any person as the Prime Minister for some period less than six months even though such a person may not command a majority in the House of the People for the time being.

### The Prime Minister of India

Under the English Constitution the Prime Minister is the leader of the Cabinet and he gains this position as the head of the Party by a majority in the House of Commons. Theoretically, the position of the Prime Minister is only *primus inter pares* (the first among equals), but in actual practice he is referred to by the members of the Cabinet as the Premier, for if any minister disagrees with him he is expected to resign. He is thus "the keystone of the Cabinet arch." The other ministers virtually hold their office at the pleasure of the Prime Minister.

In India much depends upon the personality of the holder of the office of the Prime Minister. There is truth in what Lord Asquith said, "the office of the Prime Minister is what its holder chooses to make it." The Prime Minister in our country should-

ers very heavy responsibilities particularly in case of those arising out of international relations and international matters of great importance. Further, as is common in England, the Prime Minister usually remains aloof from departmental duties so as to enable him to perform his primary function under the Cabinet system, viz., the function of co-ordinating the policy of the Government. But in a vast country like India with extraordinary volume of governmental business to be transacted, it becomes very difficult for the Prime Minister to perform the only function of the co-ordinator of policy of government. As a result of this, the Prime Minister in India has taken upon himself heavy responsibilities particularly of the nature of maintaining peace, and amicable relations between different countries in the world.

The principle of collective responsibility is also embodied in our Constitution under Art. 75(3). In this we have followed the English convention, as Art. 75(3) lays down that the President is to act with the advice of the Council of Ministers as communicated through the Prime Minister and also upon that of individual ministers, at least in matters of great importance. Under Art. 63(1) a similar provision is laid down in the case of the State Governor.

### **Collective Responsibility of Ministers**

The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister but all of them shall hold office during the pleasure of the President and they shall be collectively responsible to the House of the People. (Art. 75(1)-(3)). This means that a Minister who loses the confidence of the House will be required to resign. The question whether any, and if so, what advice was tendered by Ministers to the President shall not be enquired into in any court (Art. 74(2) ).

This means that the Ministers are jointly and severally responsible to the House of the People for every legislative and executive act of the Government, as also for every legislative measure introduced in Parliament with the authority of the Government. The responsibility of the ministry individually and collec-

tively is secured by the fact that the Minnsters are in effect dismissable at the pleasure of the House of the People through their inability to carry on the Government without its support.

Ministerial responsibility as provided under the Indian Constitution follows the English pattern, which has three distinct aspects, namely, responsibility to the legislature, responsibility to the President and legal responsibility.

(1) *Responsibility to the Legislature.* Art. 75 of the Constitution provides that the Council of Ministers shall be collectively responsible to the House of the People. The result is that the House of the People can dismiss the Ministry by passing a vote of no confidence against it or rejecting a Bill introduced by the Ministry. The salaries and allowances of the ministers are determined by Parliament from time to time. As a result, the House of People can force a Minister to resign by reducing his salary to a nominal amount or rejecting it altogether. It is possible that following upon the practice as is prevalent in England, the Ministry may require the President to dissolve the Lower House in order to ascertain the will of the people. If it secures majority then the Ministry remains in power but if it does not, then it has to resign.

(2) *Responsibility to the President.* The President appoints the Prime Minister and other Ministers on the advice of the Prime Minister. It follows, therefore, that the Ministers hold office during the pleasure of the President, who can thus dismiss them if he so pleases. But in actual practice, the President exercises his power only on the advice of the Prime Minister in order not to precipitate any dead-lock, as the dismissal of a Minister would mean the resignation of the whole Ministry.

(3) *Legal Responsibility.* Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the form laid down in Art. 75(4) and Schedule 3 of the Constitution.

A Minister who for a period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a minister : (Art. 75(5)).



## The Attorney-General for India

(Arts. 76, 88, and 124)

The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India (Art. 76(1)).

*His qualifications.* His qualifications shall be the same as those of a Supreme Court Judge as laid down in Art. 124, namely;

- (1) he shall be a citizen of India; •
- (2) he must have been for at least five years a Judge of a High Court or two or more such Courts in succession; or
- (3) he must have been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (4) he is, in the opinion of the President, a distinguished Jurist (Art. 124).

Under Article 76(4) he holds office during the pleasure of the President and receives such remuneration as the President may determine.

*His duties.* (Art. 76(2)). His duties are to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may be referred to him by the President, and to discharge the functions conferred by the Constitution.

*His Rights.* (Arts. 76(3) & 88). He has a right of audience in all Courts in India as also the right to speak in, and otherwise to take part in the proceedings of either House, or any joint sitting of the Houses, or any Committee of Parliament of which he may be named a member, but shall not by virtue of Art. 88 be entitled to vote.

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## CHAPTER 7

### PARLIAMENT

(Arts. 79-122 & 330-331, 334 & Schedules 3 & 4)

Article 79 of our Constitution lays down that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

Parliament is the Central Legislature of India and it is sovereign, that is, it is independent of all external authority and is supreme in its internal matters. The fundamental feature of the English Parliamentary system of Government is a harmonious blending of the legislative and executive organs of the State in as much as the executive power is wielded by a group of members of the Legislature who command a majority in the House of Commons and remain in power so long as they retain that majority. We have also seen that no Act of British Parliament can be challenged by the Courts, but the Act of Indian Parliament will always be subject to Judicial Review. It follows, therefore, that the judiciary in India has power to declare an Act of Parliament unconstitutional and void. This provides us with a very powerful safeguard of the liberty of subjects by preventing the executive from infringing the liberty of the people in an unconstitutional manner.

The first function of the British Parliament is that of providing a Cabinet and holding it responsible. Its responsibility is to the House of Commons. Further, in England the Prime Minister is chosen by the Crown informally while in some modern Constitutions, such as, Eire, Japan, and Burma the Prime Minister is formally nominated by the popular Chamber. *Our* Constitution follows the English system and leaves the choice of the Prime Minister and his Cabinet to the convention, subject to

the collective responsibility of the Council of Ministers to the popular Chamber.

Under our Constitution, the President is made a member of the Legislature. The Parliament of the Union is thus, a composite body consisting of the President and the two Houses and 'law of Parliament' means a law passed by the two Houses, followed by the assent of the President, subject to the provisions in Arts. 108-109, regarding Money Bills. We have already discussed in *Stockdale v. Hansard*, that resolutions of either House of Parliament are not equivalent to laws made by Parliament, nor are the Courts precluded from examining the legality of acts done under the authority of such resolutions.

### **The Council of States (Rajya Sabha)**

**(Arts. 80, 83(1), 84 & 89-92)**

✓ *Its Composition.* Art. 80 gives us the composition of the Council of States which consists of :—

✓ (a) Twelve members to be nominated by the President in accordance with the provisions of clause (3) and consisting of persons having special knowledge or practical experience in respect of literature, science, art and social service etc.; and

✓ (b) Not more than two hundred and thirty eight representatives of the States. This brings the number to two hundred and fifty in all. There is no election for the Council of States, but the representatives of each State specified in Part A or Part B of the First Schedule in the Council of State shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of a single transferable vote. The representatives of the Part C States shall be chosen in such manner as Parliament may by law prescribe.

✓ In framing its composition, the Constitution-makers have combined certain features of the Constitutions of Eire and of South Africa, by providing one Upper Chamber for the Union Parliament. Members of this House are elected by State Assemblies which gives a federal character to this House. But the

American principle of equality of State representation has not been followed in *our* Constitution.

The English House of Lords is the only second Chamber in the world which has a majority of hereditary Peers. As compared to the House of Commons, this House has come to occupy a subordinate position in the English political system. The predominance of the Lower House is essentially due to the nature of the Cabinet system itself. The Parliament Act, 1911, practically deprived the House of Lords of any power over 'Money Bills'. As regards other Bills, the House has only a suspensory veto, that is, the power to effect a delay in the passing of such a Bill not exceeding two years and one month, from the initial second reading of the Bill in the House of Commons. Even this suspensive veto has been further reduced by the Parliament Act of 1949. So, though the House of Lords can discuss and amend Bills other than Money Bills, they are no longer in a position to prevent the enactment of any Bill for more than one year and one month since its second reading in the House of Commons in the first of two successive sessions. The House of Lords has thus been reduced to a position of a revising Chamber with an important function of pointing out defects of hasty legislation. This is illustrated by the fact that the Attlee Government accepted from the House of Lords, not less than 230 amendments to the Bill nationalising transport, 360 amendments to the Bill controlling limited liability companies and similar amendments with regard to other Bills. In 1949, the House of Lords rejected a Commons motion to abolish capital punishment and forced the Government to issue a Royal Commission to investigate the means of limiting death penalty in Britain. It may be noted here that as a result of the investigations of the Commission, capital punishment was not abolished and another Bill is pending in the House of Commons which purports to abolish capital punishment. In the words of Jennings, "Legislation is not the sole or even the more important function of the House of Lords. That House is rather an assembly for the debate of the technical and in the party sense, less 'political' issues of Government. Because the fate of the Government does not depend upon its votes and because of its preponderance of one party, the House of Lords can debate in a less obviously partisan manner, the principles of foreign

imperial policy;.....and because the peers have no constituents to placate, no meetings to address and often, no speeches to make, they devote more time to the less spectacular but often useful technical functions of legislative control."

The American Senate is composed of two Senators from each State elected by the people. It means that the Upper Chamber is an elective chamber, and by providing equality of representation of the States, irrespective of their size or population, the Federal principle of the Constitution has been maintained. In its powers it has hardly any other Second Chamber to equal it and in many cases it has equal powers with the other Chambers except that money bills cannot be initiated in the Senate, but it is free to amend or reject any money bill, a situation which is unthinkable under the English Constitution. It has also very wide powers, for, whatever appointments the President makes, the consent of the Senate for such appointments is necessary. Further, the President must take its consent for making treaties. So far the Senate has refused its assent to over 60 treaties proposed by the President. So great are its powers that it lead Mr. Laski to observe, "no legislative assembly of the world rivals the Senate of the United States in its influence in the international sphere." (American Presidency).

The Canadian Senate is a nominated Second Chamber consisting of 96 members nominated for life by the Governor-General, acting on the advice of his Cabinet, the nomination being distributed amongst the Provinces according to a certain ratio, and not equally as in the United States. Being a nominated body, composed of members who are rewarded for their services to some party organisation, it is, in the words of Clokie, "The one conspicuous failure of the Canadian Constitution. The failure springs from the unchanging partisanship of the appointments; the Senate has been called the Ministry's 'pocket-borough'..... For some thirty years the public have scarcely been aware of the Senate's existence, for its proceedings are rarely reported in the Press.....Its primary use is to provide a dignified seclusion for retired politicians." (Canadian Government and Politics, quoted by Basu in his Commentary on the Constitution of India.)

The Senate of Eire is a partially elected and partially nomi-

nated body. The Japanese constitution, under Article 43, provides that, "both Houses shall consist of elected members, representative of all the people. The number of the members of each House shall be fixed by law." The Japanese Parliament has thus the distinction of having an elected Second Chamber.

✓ The Council of States under the Indian Constitution is not subject to dissolution, but one third of the members thereof retire on the expiration of every second year (Art. 83(1)). The object of this Article is to prevent the House from being turned into a stale body and to have a continual flow of fresh talents. It is thus a permanent House and not subject to dissolution, but receives new members every second year.

— *Qualification for its Membership.* Art. 84 lays down that the person shall not be qualified to be chosen to fill a seat in the Council of State unless he is a citizen of India; is not less than 30 years of age and possesses such other qualifications as may be prescribed by Parliament.

— *Chairman of the Council of State* (Art. 89-92). The Vice-President of India is the *ex-officio* chairman of the Council of States, which Council may choose its Deputy Chairman. Though the Vice-President is elected by both Houses of Parliament assembled at a joint meeting, he is expressly prohibited to remain a member of either House of Parliament. While any resolution for his removal from his Office is under consideration, he may take part in the proceedings and shall have the right to speak in, but is not entitled to vote on such a resolution or any other matter during such proceedings, notwithstanding anything in Art. 100.

— *His Functions.* They are similar to those of the Speaker in the House of the People. It follows, therefore, that there is no distinction under *our* Constitution between the two Houses in this respect, as it exists in England. The power of certifying a Bill to be a Money Bill, belongs solely to the Speaker.

— In the absence of the Chairman his duties and functions are performed by the Deputy Chairman. Both the Chairman as well the Deputy Chairman cannot preside while a resolution for re-

removal of either of them from office is under the consideration of the House.

### **House of the People (Lok Sabha)**

**(Arts. 81-84, 93-96, 100, 112, 330-334)**

✓ The House of the People, or the Lower House shall consist of not more than 500 members directly elected by the people. The constituencies are to be territorial and the election is to be on the basis of adult franchise, that is, every citizen who is not less than 21 years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice is entitled to be a voter. The proportion of electoral representation must be not less than one representative for every 500,000 of the population.

Under the English Constitution the House of Commons consists of 625 members, elected by single-member territorial constituencies of the United Kingdom. Each member represents about 80,000 of the people.

In America the House of Representatives is composed of members chosen every second year by the people of several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branches of the State Legislature. It is laid down that each State must have one member for every 30,000 inhabitants. At present the House of Representatives has 435 members elected by the people directly, by single-member territorial constituencies. Each member represents about 350,000 of the people.

In Australia the House of Representatives is elected by the people voting directly in the States in proportion to the population of each State. The number of representatives to be elected in each State can be ascertained by fixing a quota by dividing the population of the Commonwealth by twice the number of Senators, and then dividing the population of the State by the quota so ascertained, subject to the right of every original State to a minimum number of five members. The number of members elected to this House since the election of 1951 stands at 123.

The election of the first House of the People of India was

on the basis of the present population of each State as on March 1, 1950, estimated in consultation with the Census Commissioner for India. The total number of seats in this House stands at 499 and allocation among the different States is made on the basis of one seat for every 7,20,000 of the estimated population, in the following manner :—

<i>States in Part A</i>		<i>States in Part B</i>		<i>States in Part C</i>	
1. Andhra	28	1. Hyderabad	25	1. Ajmer	2
2. Assam	12	2. Jammu and Kashmir	6	2. Bhopal	2
3. Bihar	55	3. Madhya Bharat	11	3. Coorg	2
4. Bombay	44	4. Mysore	12	4. Delhi	4
5. Madhya Pradesh	29	5. Pepsu	5	5. Himachal Pradesh	4
6. Madras	46	6. Rajasthan	20	6. Kutch	2
7. Orissa	20	7. Saurashtra	6	7. Manipur	2
8. Punjab	18	8. Travancore-Cochin	12	8. Tripura	2
9. Uttar Pradesh	86			9. Vindhya Pradesh	6
10. West Bengal	34			10. Andaman & Nicobar	1
				11. Part B Tribal Areas	1
				12. Anglo-Indians (Nominated)	2
				Total	499

From this it follows that the entire adult population, excepting those who may be disqualified under the Constitution, or under any law, namely, non-residents, unsoundness of mind, crime or corruption or illegal practice as given under Art. 326, are entitled to be registered as voters at any such elections. Clause (3) of Art. 81 fixes the maximum strength of the House of People. But Parliament has the power of readjusting the Constituencies upon the completion of each decennial census.



This readjustment is to be made not immediately after the publication of the Census Report but upon the dissolution of the then existing House. Similarly, provision is also made under Art. 170(4) as regards the Lower House of a State. For this purpose Parliament has enacted the Limitation Commission Act of 1952 which purports to set up a Delimitation Commission for the purpose of readjusting the representation of the several territorial constituencies in the House of the People as well as in the Legislative Assembly of each State other than Jammu and Kashmir.

Art. 83(2) fixes the duration of the House of the People to five years unless sooner dissolved. The period of five years is to be computed from the date appointed for its first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the House; provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months after the Proclamation has ceased to operate.

In spite of the provision for universal suffrage, some special provisions have been made to the House of the People for the representation of minorities. Arts. 330 to 334 have been included in the Constitution for this purpose. Under Article 330 seats are reserved for Scheduled Castes and Schedule Tribes in the House of the People. The President may, if he is of the opinion that the Anglo-Indian community in the House of the People is not adequately represented, nominate not more than two members of that community to the House of the People (Art. 331).

Such seats are also reserved for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States in Part A or Part B under Article 332. Similarly, under Article 333 representation of the Anglo-Indian community in the Legislative Assemblies of the States is reserved notwithstanding anything in Article 170, in which case the Governor or the Rajpramukh of a State, may if he is of opinion that the said community needs representation in the Lower House of the State and is not adequate-

ly represented therein, nominate such members of the community to the Assembly as he considers appropriate.

Under Article 334 it is laid down that this concession given to the abovementioned communities shall cease to have effect on the expiration of a period of *ten years* from the commencement of this Constitution. This Article comes into effect only after the dissolution of the then existing House of the People or a Legislative Assembly, as the case may be.

*Qualification for Membership of Parliament* (Art. 84). A person shall *not* be qualified to be chosen to fill a seat in the House of the People unless he—(a) is a citizen of India; (b) is not less than twenty-five years of age; and (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

In England any person of full age, qualified to be a voter, who is not a peer and who is not disqualified by any statute, may become a member of the House of Commons. In Canada the qualifications for memberships of either House are not laid down in the Constitution, but they are provided by a statute which says that persons of either sex are eligible provided they are twenty-one years of age for the House of Representatives, and thirty years for the Senate. Property qualifications are laid down for a person who wishes to be elected a Senator. He is required to own substantial real property in the Province which he represents. In the United States a person to be a Representative must have attained the age of twenty-five years and must have been a citizen of the United States for a period of seven years, and shall not, when elected, be an inhabitant of that State in which he shall be chosen. In Canada, Article 16 of the Constitution of 1937 provides that every citizen without distinction of sex, and who has attained the age of twenty-one, and who is not placed under disability or incapacity by any law, or by the Constitution, is eligible for membership of the Dail. In Japan, the qualifications of members of both Houses and their electors are fixed by law. Burmese Constitution provides under Section 76 similar provisions as under Article 16 of the Constitution of Eire, 1937.

One important feature of Art. 84 is the right of franchise

given to women in India. It took women in England to win this right more than a hundred years, while by a stroke of pen women were given full political rights and equality with men. It should also be noted that under our Constitution a person qualified to be a voter is also qualified to stand as a candidate for election. (Refer Art. 326). Thus, our Constitution departs from the general rule, because, under Clause (c) of Art. 84, Parliament is empowered to lay down *additional* qualifications for being a member of either House of Parliament. These additional qualifications have been laid down in sections 3 & 4 of the *Representation of the People Act, 1951*.

*Disqualifications for Membership.* (Art. 102). Even though a person is qualified according to Art. 84 to be a member of the House of the People, he would still be disqualified to be chosen to continue to be a member, if he incurs any of the disqualifications as specified in Art. 102(1). The principle underlying this disqualification is that there should be no conflict between the duties of a member of the Legislature as such and his private interests. A member who is elected is expected not to hold any 'office of profit', and if he does so he is disqualified for membership of Parliament.

Our Constitution fails to define as to what constitutes an 'office of profit'. The word profit is used in a wide sense and is not necessarily confined to emoluments in the nature of a salary. Thus, fees for attending the meeting of a Committee, travelling allowances, and the like can easily come within the scope of 'office of profit'. In *Ravanna v. Kaggeerappa, 1954*, the Supreme Court has taken a rather narrow view of the word 'profit'. They held that the Chairman of a Development Committee who draws a fee of Rs. 6 per sitting could not be said to hold an office of profit under the Government within the meaning of Sec. 14 of the Mysore Town Municipalities Act, 1951. It was held that the plain meaning of the expression 'office of profit' means an office necessarily held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gains. In the above case, therefore, a fee of Rs. 6 per sitting is a consolidated fee for the out-of-pocket expenses which he has to incur for

attending the meetings of the Committee. There is even no English authority which would explain the meaning of the expression 'office of profit.'

It is therefore difficult to say exactly what can we mean by 'office of profit' as laid down under Arts. 102(1) (a) and 191(1) (a) of the Constitution. However, we can say that the question is whether the 'office' is an office of profit or not and whether the holder is making any profit for the time being. From this point of view, if a person holds an office and that office is an office of profit, then it does not matter whether the person accepts any remuneration as a result of his holding this office. The payment made by reason of the person's holding the office is sufficient to constitute 'profit'. It is, therefore, the power of appointment and removal and not the source of remuneration paid which determines any office held under the 'Government of India', or any State, as the case may be. It is also not necessary that the person must be a Government servant in the strict sense of the term. Hence persons holding office under statutory bodies or corporations would come within the disqualification under the present clause if the power of appointment to and removal from the office belongs to Government, even though the remuneration or allowances of such persons are paid from the funds of the statutory bodies or corporations.

However, under the Prevention of Disqualification Act (XIX), 1950, certain offices do not constitute 'office of profit' and do not disqualify a person from holding a membership of Parliament. These offices are: (1) Office of a Minister of State or a Deputy Minister or a Parliamentary Secretary, or a Parliamentary Under-Secretary. Under the Prevention of Disqualification Act, 1954, the following offices will disqualify the holders thereof for membership of Parliament; (a) the offices of Chairman and Member of a Committee set up by Government for the purpose of advising it or any other authority in respect of any matter of public importance or for the purpose of making an enquiry into, or collecting statistics in respect of any such matter; provided that the holder of any such office is not in receipt of or entitled to, any fee or remuneration other than compensatory allowance; (b) the offices of the Vice-Chancellors

of Universities; (c) the offices of the Deputy Chief Whips in Parliament; (d) the offices held by officers in the National Cadet Corps, raised and maintained under the N.C.C. Act, 1948 and in the Territorial Army raised under the T.A. Act, 1948.

Clauses (b), (c), (d), and (e) of Art. 102(1) lay down further disqualifications for membership. Under Cl. (b) a person is disqualified if he is of unsound mind and stands so declared by a competent court; under Cl. (c), if he is an undischarged insolvent; under Cl. (d) he is disqualified if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; and under Cl. (e) is disqualified if Parliament enacts any law according to which a person may be disqualified to be a member of the House of the People.

Section 7 of the Representation of the People Act, 1951, lays down further disqualifications for membership of Parliament or of a State Legislature as follows:—

(a) if, whether or after the commencement of the Constitution, a person has been convicted or has been found to have been guilty of any offence of corrupt or illegal practice; or

(b) if he has been convicted by a Court in India of any offence and sentenced to transportation or to imprisonment for not more than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release; or

(c) if, after having been elected he fails to lodge a return of election expenses within the time and in the manner required by or under this Act; or

(d) if, whether by himself or by any person or body of persons in trust for him, or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any works undertaken by the appropriate Government; or

(e) if, he is a director or managing agent of or holds any office of profit, under any corporation in which the appropriate Government has any share or financial interest; or

(f) if, a person has been dismissed for corruption or disloyalty during his service under the Government of India or

the Government of any State or under the Crown in India or under the Government of any Indian State.

*Salaries and allowances of Members* (Art. 106). Members of either House of Parliament shall be entitled to receive such salaries and allowances as may be fixed by Parliament by law from time to time, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India. Under the Salaries and Allowances of Members of Parliament Act, 1954, a member of Parliament is entitled to a salary at the rate of Rs. 400 per mensem during the whole term of his office plus an allowance at the rate of Rs. 21 for each day during any period of residence on duty at the place where Parliament is sitting or where any other business connected with his duties as member of the Parliament is transacted. He is also entitled under this Act, to a travelling allowance, free transit by railways and other facilities as prescribed by rules framed under the Act.

In England, since 1946, every member of the House of Commons gets an annual salary of £1,000. He is not entitled to the salary until he has taken the oath. Besides this, he is entitled to travelling expenses and other facilities as the Parliament may fix from time to time. In the United States, a member of either House of Congress gets a salary of 12,500 dollars, plus 2,500 dollars as an additional allowance per annum. Besides this, he gets other free facilities. In Canada, a Senator receives a salary of 400 dollars per session plus a living allowance of 200 dollars a year, in addition to travelling allowances, sickness and other benefits. But a member of the House of Commons, gets the salary and living allowances of a Senator plus additional benefits like the living allowance of 200 dollars per annum, which is tax free. In Australia each member of the House of Representatives and Senate gets a salary of £1,500 per annum plus a living allowance while in attendance at the Capital. There is also a contributory pension scheme.

*Disqualifications of Members of Parliament* : (Art. 101). Cl. (1) of this Article states that no person shall be a member

of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other. A similar provision is found in other Constitutions. In Canada under Section 39 a Senator shall not be capable of being elected or of sitting or voting as members of Commons. In Eire under Article 15(14) of the 1937 Constitution, no person can be a member of both Houses at the same time and, if he is elected to both the Houses he shall forthwith be deemed to have vacated his first seat. In Japan under Article 48, no person is permitted to be a member of both Houses simultaneously. Under Article 24 of the French Constitution of 1946, a similar provision has been incorporated. In England, double membership is avoided by the rule that none but a peer may sit in the House of Lords. On the other hand, a peer is disqualified to be elected to the House of Commons and if a sitting member of the Lower House is raised to peerage, his seat is declared to be vacant in the House of Commons.

Under Art. 101(2), simultaneous membership of a House of Parliament and of a State Legislature is prohibited and the vacation of one of the seats is left to be determined by law made by Parliament. But under Art. 101(2) it is to be determined by rules made by the President, who has already framed the Prohibition of Simultaneous Membership Rules, 1950.

*Vacation of seat by a Member :* Art 101(3) provides the contingencies upon the happening of which and time from which a member's seat shall be vacant. If a member of either House of Parliament becomes subject to any of the disqualifications mentioned in Cl. (1) of Art. 102, or resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant. It follows that soon after a member incurs any of the disqualifications mentioned in Art. 102(1), he is deemed to have vacated his seat. In case of any dispute, the President under Art. 103(1) gives his decision on this matter and his decision shall operate retrospectively, and once this decision is given the member shall be deemed to have vacated his seat from the moment he had incurred the disqualification, for example by reason of insanity, in-

solvency etc. As regards the disqualified member taking part in the proceedings of the House, the validity of any decision taken shall not be affected by reason of such participation by the member who is subsequently disqualified. Art. 99(2) is very clear on this point that, "any proceedings shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled . . . . . took part in the proceedings." The Supreme Court has held in *Election Commission v. Saka Venkata*, 1953, that a pre-election disqualification is not included within the purview of this clause. It follows, therefore, that if a person, after having been elected, incurs any of the disqualifications mentioned in Art. 102(1), his seat shall become forthwith vacant.

A member may also submit his resignation, if he wishes to vacate his seat by writing addressed to the Chair and according to the procedure laid down in such matters, and the resignation is effective from the date on which the member submits his letter of resignation. The member has thus no option to fix any date previous or subsequent, from which his resignation shall take effect.

The resignation so submitted must be a voluntary act of the Member, and it is a moot point whether a Civil Court has the jurisdiction to enquire whether a letter of resignation was a forged document or was obtained by force or misrepresentation. The Travancore High Court in *Thankamma v. Speaker*, A.I.R. 1952 T. C. 166, has held that the Court had the jurisdiction to look into such matters. But this is not free from doubt, because, if the resignation is a part of the proceedings of the House, then under Art. 122(2), Courts have no power to inquire into proceedings of Parliament on the ground of any alleged irregularity of procedure and no officer or member of Parliament in whom powers are vested, by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise of those powers. The Speaker being the officer of the House to whom the resignation is addressed by the member, it is doubtful whether the



Court can inquire into such matters which fall within the jurisdiction of the House only.

*Vacation by absence.* A member, under Cl. (4) does not automatically vacate his seat in either House by absence for any length of time. But if a member remains absent for a continuous period of sixty days, the House may declare his seat vacant by a resolution.

A member remaining absent for a period of sixty days or more can do so by making an application in writing to the Chairman of the Council of States stating the period for which the member seeks the permission to remain absent from the House. The Chairman then reads out the application to the Council and asks if the Council would grant the permission to such a member for remaining absent from the meetings of the Council. No discussion will take place on any question before the Council under this rule and the Secretary shall communicate the decision of the Council to the member.

In case of the House of People, the procedure is that the House has provided for a Committee on '*Absence of Members from Sitzings of the House*', and it is obligatory to refer all such applications for leave of absence to this Committee. The report of the Committee on such an application is considered by the House and the decision of the House is then communicated to the member concerned through the Secretary. This Committee also examines cases where members have been absent for a period of sixty days or more, without the requisite permission as required under the rules.

For declaring a seat vacant where a member has remained absent for a period of sixty days or more without leave of the House, a specific motion must be moved by the leader of the House or by such other member who may be delegated this function.

### **Powers, Privileges, etc. of the Houses of Parliament and of the Members and Committees thereof (Art. 105)**

Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament,

there shall be *freedom of speech* in Parliament. Further, no member of Parliament shall be liable to any proceedings in any Court in respect of any thing said or any vote given by him in Parliament or any Committee thereon. And no person shall be liable in respect of the publication by or under the authority of either House of Parliament of any *report, paper, votes or proceedings*.

It follows from this that our Constitution lays down the privileges of the Indian Parliament with respect to the freedom of speech and publication of speeches and proceedings, in clauses (1) and (2) of Art. 105. Except for these two clauses the privileges of members of our Parliament shall be the same as those of members of the English House of Commons. In England, by the Bill of Rights, 1689, Members of Parliament enjoy *absolute* freedom of speech for debates and proceedings in the House, so that no action or proceeding can lie for words uttered within the four walls of Parliament. But this does not mean that a member has a licence to take an undue advantage of this privilege and he can, with impunity make libellous attacks on private persons within the precincts of the House. For this purpose each House possesses the power to control undue licence of speech on the part of its members as also to regulate the proceedings and in- within the precincts of the House. For this purpose each House by suspension or expulsion. Further, members are prohibited from using unparliamentary language, or say anything disrespectful to either House or the Chair, or to refer any other member by name or to use the King's name in an irreverent manner and to refer to any debate of the same session or any debate in the other House. The Speaker is entitled to stop speeches on the ground of improper language or irrelevance.

With regard to the right of publishing debates and proceedings, each House has an absolute right to do so. The Parliamentary Papers Act, 1840, after the decision given in *Stockdale v. Hansard* was passed, to override this decision and it laid down that no proceedings for defamation lies for any publication made *under the authority* of either House of Parliament. It may be noted that the debates in the Commons are officially prepared and published every day as "Parliamentary Debates" which are available not only to the members but also to the public in England.

Similar provisions are also included in other constitutions. Under the Constitution of Eire, 1937, under Art. 12, all official reports and publications of either House and the utterances made in either House wherever published shall be privileged, and members of each House shall be privileged from arrest in going to and returning from, and while within the precincts of either House, and shall not, in respect of any utterance in either House be punishable by any Court or any authority other than the House itself.

The freedom of speech guaranteed under Cl. (1) within the Houses, and absolute immunity from action in Courts against a member who avails himself of this freedom under Clause (2) is not subject to the restrictions contained in Art. 19(2), for these restrictions are imposed upon the freedom of speech of an ordinary citizens. The privilege, therefore, given in Cl. (2) of Art. 105 is wider as it covers even conversation on private affairs, a privilege which is not enjoyed by the members of the British Parliament. But this privilege does not extend to anything said outside the House or any Committee thereof.

By the Rules or Conventions of Parliament members are prohibited from publishing their speeches made in the House, a rule, analogous to the provision prevailing in England as we have seen above. Under these Rules a member should not publish questions or resolutions which he intends to put or move, before they are admitted by the Chair. A member is not expected to give out anything for publication until the whole matter is laid on the Table. Proceedings and decisions of any secret sitting of the House should not be disclosed in any manner. It is a duty of the Secretary to prepare a full report of the proceedings of the House at each of its meetings and shall cause the same to publish in such form and manner as he may, from time to time direct. A paper, document or report printed, published, distributed or sold in pursuance of the rule quoted above shall be deemed to have been printed, published, distributed or sold under the authority of the House within the meaning of Cl. (2) of Art. 105.

Under Cl. (3) of Art. 105 members of the Parliament enjoy the same rights and privileges as the members of the British

House of Commons at the commencement of *our* Constitution. Cl. (3) reads as follows :

“In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.” In England the privileges of members of Parliament are :

(a) *Freedom from arrest* : During a session and for a period of forty days before and after the session, and when Parliament is dissolved or prorogued and even though the member may not be elected to the new House, a member of House of Commons is immune from arrest in civil proceedings *only*. But this immunity does not extend in cases of bankruptcy proceedings; proceedings for criminal contempt of Court; preventive detention under statutory powers; for felony, treason, seditious libel or breach of the peace; refusal to give security for good behaviour.

(b) Exemption from service as jurors, irrespective of the fact whether the Parliament is sitting or not.

(c) Exemption from attendance as witnesses while Parliament is in session. It is for Parliament to grant leave in the interest of the administration of justice.

In India also the Courts have held that this immunity from arrest does not extend to other than civil cases and hence a member of either House can be arrested under a law of preventive detention, and during the period of his detention a member has a right to correspond with the Legislature, but is not entitled to attend the sittings of the House. In such cases the House has a right of being informed of the fact of arrest and detention and of the reasons why the House is being deprived of the participation of a member in its deliberations.

Further, when a member is arrested on a criminal charge or for a criminal offence and is then sentenced to imprisonment by a

criminal court, or when a member is detained under the preventive detention or is released on bail, it is the duty of the Magistrate or Court to inform the Speaker by a letter in the prescribed form of the facts of the arrest and detention of the Hon'ble Member.

In the regulation of its internal procedure and the interpretation of the law relating thereto, each House has unquestionable authority in this respect. But if any proceeding in the House affects the rights of any person arising out of the ordinary law of the land and exercisable outside the four walls of the House, the Courts will have the jurisdiction to determine whether the privilege claimed by the House exists and, if so, whether it would go so far as to justify the breach of the ordinary law of the land.

### **Questions of Privileges between the two Houses**

This entire question has been settled by the joint sitting of the Committee of Privileges of the two Houses and the procedure recommended by this Committee has now been accepted by both the Houses. The procedure is as follows :—

(i) When a question of breach of privilege is raised in any House in which a member, officer, or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House.

(ii) Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House, or of a member thereof.

(iii) The Presiding Officer shall thereafter communicate to the Presiding Officer of the other House, the action taken on the reference.

In case of the offending member, officer or servant tendering an apology to the Presiding Officer, no further action in the matter is taken after such apology is tendered.

Under Art. 194(3), similar provisions are included with regard to the relation of the two Houses of the State Legislature.

### Legislative Procedure (Arts. 107-111)

Art. 107 to Art. 111 lay down the procedure followed by the Parliament in legislative matters generally, whereas Arts. 112 to 117 lay down the Parliamentary procedure with regard to financial matters.

*Provisions as to the Introduction and Passing of Bills.* (Art. 107). A Bill may originate in either House of Parliament. Cl. (1) of Art. 107 enacts the rule that the two Houses should enjoy equal powers in regard to legislation. The only inequality is with regard to financial Bills which cannot be introduced in the Council of States. A Bill so introduced in either House shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses, subject to the provisions of Arts. 108 and 109.

In England, Bills, other than Money or Appropriation Bills may originate in either House. But by convention, Bills affecting the privileges or proceedings of either House are introduced in the House concerned, while Bills dealing with the representation of the people must originate in the House of Commons. The same rule as in Cl. (2) mentioned above is also the rule applicable in England with regard to the passing of Bills which are presented for the Royal Assent. The Parliament Acts of 1911 and 1949 have considerably deprived the House of Lords of its powers in originating legislation. But this rule applies in cases of Bills which originate in the House of Commons. But with regard to other Bills the same procedure is yet followed.

In the United States all Bills for 'raising revenue' must originate in the House of Representatives (Art. I, Sec. 7(1)). Except this, the powers of the two Houses in legislation are absolutely equal. A Bill can only become law if it passes both the Houses and is sent to the President for his signature. In Canada also except Money Bills, the two Houses have equal powers of legislation.

In France, the Upper Chamber in the matter of legislation is absolutely inferior as compared to the Lower Chamber. As a result of this, the Legislature is virtually unicameral in nature.

The power of enactment belongs solely to the Assembly and this House may or may not accept the recommendations of the Council or the Upper House. Art. 20 of the Constitution of the Fourth Republic makes this point absolutely clear. The Council has merely the power of delaying any measure by suggesting amendments which may or may not be accepted by the Assembly. In case of a Bill originating in the Council of the Republic (Upper House), it is without any further delay, sent to the Assembly (Lower House) which has the power to reject the Bill outright if in the opinion of that House, the Bill will result in the reduction of the revenue or the creation of new expenditure.

*Introduction and Publication of a Bill.* Before a Bill is introduced, the Speaker, on request made to him, may order the publication of any Bill in the Gazette. When the same Bill is later on introduced it is not necessary to publish it again.

Any member other than a Minister, desiring to move for leave to introduce a Bill shall give notice of his intention and along with his notice submit a copy of his Bill and of 'the Statement of Objects and Reasons' which shall not contain any argument. If the Bill is of such a nature that it cannot be introduced without the permission of the President, then the member shall annex to the notice such sanction or recommendation conveyed through a Minister and the notice shall not be valid unless this requirement is complied with.

The period of notice of motion for leave to introduce a Bill shall be one month unless the Speaker allows the motion to remain at shorter notice. If a motion for leave to introduce a Bill is opposed by any member, the Speaker, after permitting a brief explanatory statement from the member moving a Bill and from the member opposing the motion, may, if he thinks fit, without further delay, put the question thereon; and if a motion is opposed on the ground that the Bill initiates legislation which is outside the competence of the House, the Speaker may permit a discussion thereon.

*Motions after Introduction.* When a Bill is introduced the member in charge of the bill may make one of the following motions in regard to the bill, namely, that the bill may be taken

into consideration; or it may be referred to a Select Committee; or referred to a Joint Committee of the Houses with the concurrence of the other House; or it may be circulated for the purpose of inviting opinions on the same. Before doing this it is necessary that the Bill must be made available for the use of members and if the copies of the Bill have not been circulated. two days before the motion is made, then any member may object to any such motion being made.

On the day on which any motion is made on a Bill, the general practice is to discuss the general principle and general provisions of the Bill, but not its details. At this stage no amendment to the Bill is generally moved, but if the member in charge of the Bill moves that the Bill may be taken into consideration, then any member may move an amendment to the effect that the Bill may be referred to a Select Committee or Joint Committee or be circulated for the purposes of eliciting opinion thereon.

If a Bill has been referred to a Select Committee, the Bill is considered by this Committee which submits its report within the time fixed or extended by the House, or within three months from the date of adoption of the motion for reference to the Committee where the House has not fixed any time for the presentation of such a report., When the report is being submitted by the Chairman with the minutes of dissent, together with a brief statement of facts there is no debate held at this stage. After this the member in charge of the Bill may move that the Bill as reported by the Select Committee be taken into consideration; or that the Bill be re-committed either without limitation or with respect to particular clauses or amendments only; or that the Bill as reported by the Select Committee be circulated or re-circulated for the purpose of obtaining opinion or further opinion thereon. In all such cases the principles of the Bill can no longer be discussed because by carrying a motion to refer the Bill to a Select Committee, the House stands committed to the principle of the Bill.

*Passing of a Bill.* When a motion that a Bill be taken into consideration has been carried, and no amendment of the Bill has been made, or, after the amendments are over, the member in charge may move that 'the Bill may be passed'. To such a



motion, no amendment can be moved unless it is either formal, verbal or consequential upon any amendment of the Bill made after the Bill was taken into consideration.

*Procedure relating to Amendments.* An amendment cannot be moved unless notice is given at least one day before the day on which the Bill is to be considered, the Chair only can waive this requirement. Further, in cases where the sanction or recommendation of the President is required by the Constitution for moving an amendment, such sanction or recommendation must be annexed to the Notice of Amendment.

A member who wants to move an amendment must formerly move it before proceeding to speak on it. A member who speaks on the original motion without moving an amendment and after that resumes his seat, he is not entitled to move an amendment at any subsequent stage. The rule is that an amendment of which notice has been given, must be moved after the clause is placed before the House for consideration and before the general discussion begins, but it cannot be moved after the general discussion is over and the clause is about to be put to vote. For the purpose of moving his amendment a member must always remain in his seat when he is called upon by the Chair to move the amendment. If he is absent at this time, he cannot subsequently move his amendments. When an amendment has been moved, it cannot be withdrawn except with the permission of the House.

In arranging amendments raising the same question on the same point, precedence is usually given to an amendment moved by the member in charge of the bill. Otherwise, amendments are usually arranged in the order in which notice of the amendments were received. But the Chair has an unfettered discretion to select amendments as also to determine their order and is not bound to call them in the order in which notices were received.

An amendment which seeks to substitute an entire scheme should have priority over amendments limited to a part only of the matter to be amended. Thus, an amendment which seeks to substitute a different clause, for the clause in the bill is to be

taken first and if that is thrown out, then only the other amendments are to be moved.

The Chair has the discretion to direct a single discussion on a number of inter-dependent amendments, in order to save time and repetition. Even in case of the amendment which seeks to leave out, modify or substitute certain words the debate is not allowed to be extended to the other words of original motion which are not affected by the amendment. In case an alternative amendment is moved, the old ground is not allowed to be covered, because it involves repetition and waste of precious time of the House.

It is for the Chair to reject an amendment if it is not within the scope of the Bill and is not relevant to the subject matter of the clause under consideration. But if an amendment is within the scope of the Bill, then it may be moved as an amendment to add a new clause, even though, it is not relevant to the clause under consideration. Such an amendment must not be inconsistent with any previous decision of the House on the same question and it must not be such as to make the clause which is proposed to be amended unintelligible and ungrammatical. In the opinion of the Speaker, the amendment must not be frivolous or meaningless, if so, the Chair will disallow such an amendment, which is tendered in a spirit of mockery.

*As to the lapsing of a Bill* (Art. 107(3)(4) and (5)). A Bill pending in Parliament shall not lapse by reason of prorogation. This is an improvement upon the position existing in England. Pending motions would no doubt lapse but not pending Bills. Pending Bills in one session are transmitted for being passed during the next session and they would require no fresh introduction in the next session. Nor shall a Bill which is introduced in the Council of State and pending there can lapse by dissolution of the House of the People. This clause is a departure from the English practice but follows the Government of India Act, 1935.

But a Bill which is pending in the House of People or which, having been passed by the House of People is pending in the Council of States shall lapse on a dissolution of the House of the People. In England, Bills pending for the assent of the Crown lapse on dissolution. But Cl. (5) of Art. 107 makes it

clear that it is only Bills pending in the House that lapse and not Bills which have been passed by Houses and are pending assent of the President.

Under Art. 195 corresponding provisions are provided, relating to State Legislatures.

*Joint Sitting of Both Houses in Certain Cases* (Arts. 108 and 118). Since both the Houses have equal power with regard to legislation, it is possible that on certain occasions differences of opinion might arise between the two Houses. Art. 108 purports to resolve such dead-locks and it authorises the President to convene a Joint Sitting of both the Houses under the circumstances mentioned in Art. 108.

If after a Bill (other than a Money Bill) has been passed by one House and transmitted to the other House — (a) the Bill is rejected by the other House; or (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it; the President may notify to the Houses by message his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill. At such a Joint Sitting the Speaker of the House of the People shall preside.

When the President has notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill. If at such a joint sitting of the two Houses, the Bill is passed by a majority of the members of both Houses present and voting, it shall be deemed to have been passed by both Houses. Our Constitution in this connection differs from the Australian Constitution in not requiring absolute majority of the total number of members of the two Houses for passage of the amendments at the joint sittings.

If, however, the Bill, having been passed by one House, has not been passed by the other with amendments, and returned to the House in which it originated, no amendment shall be proposed to the Bill. So also, if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the

decision of the person presiding as to the amendments shall be final.

Lastly, under Cl. (5) of Art. 108, where a joint sitting has been summoned prior to the dissolution of the House of the People, the Bill in respect of which the sitting was convened does not lapse on the dissolution of the House of the People. It is obvious, however, that the proviso in Cl. (5) can operate only so long as the election of a fresh Parliament has not taken place.

### **MONEY BILLS (Art. 109-110 & 117)**

We have already noted that Arts. 107 & 108 deal with the procedure in the two Houses as regards the Bills other than Money Bills. Arts. 109-110 lay down the procedure with regard to Money Bills. Separate provisions have been included in *our* Constitution, following on the experience of working of other Constitutions that the Money Bills must originate only in the Lower House. This is because of the fact that one of the factors which can easily contribute to the well-being of an individual or a nation is finance. The Constitution has, therefore, made a special mention of Money Bills. While the Upper House has the power of initiating Money Bills, the Lower House has only the power of suggesting recommendations which may or may not be accepted by the House of the People. We have taken this idea of suggesting recommendations from the Constitutions of Australia and of Eire. It follows, therefore, that the power and control of the House of the People over Money Bills shall be absolute.

### **Definition of Money Bill (Art. 110)**

A Money Bill is one which deals with the following matters *only*, namely;—

(1) the imposition, abolition, remission, alteration or regulation of any tax;

(2) the regulation of the borrowing of money or giving of any guarantee by the Government of India, or the amendment of the law with respect to financial obligations undertaken by the Government of India;

(3) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of monies into or the withdrawal from any such Fund;

(4) the appropriation of monies out of the Consolidated Fund of India;

(5) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; or

(6) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State.

A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or pecuniary penalties, or the demand of payment for fees for licences or fees for services rendered, or by reason that it provides for imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes (Art. 110(2)).

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People, thereon shall be final (Art. 110(3)).

Under the Parliament Act, 1911, a Money Bill is defined in England as follows: "A Money Bill means a public bill which in the opinion of the Speaker of the House of Commons, contains only provisions dealing with the following topics:— imposition, repeal, remission, alteration, or regulation or taxation; imposition for any financial purposes or charges on the Consolidated Fund, or on Money provided by Parliament or the variation of such charges; supply, appropriation, receipt, custody, issue or audit of accounts of public money; raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to the above topics or any of them. Bills relating to rates or loans raised by local authorities are to be regarded as Money Bills."

In Australia there is no specific provision which defines a 'Money Bill', but the purpose is served by Secs. 54-55 which provide that "the proposed law which appropriates revenue or money for the ordinary annual services of the Government shall

deal only with such appropriation" (Sec. 54), and "laws imposing taxation shall deal only with the imposition of taxation and any provision therein dealing with any other matter shall have no effect." (Sec. 55).

In the Constitution of Eire, 1937, a Money Bill means a bill which contains only provisions dealing with all or any of the following matters, namely, the imposition, remission, alteration or regulation of taxation;.....issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; matters subordinate and incidental to these matters or any them" (Art. 22(1) ).

In India the word 'only' used in Art. 110, Cl. (1) is a significant word which indicates that the Lower House can only consider that Bill to be a Money Bill if it contains any of the matters contained in Clauses (1) to (6), without any other extraneous provision. This is to safeguard the Upper House against the abuse of this provision by the Lower House, by treating ordinary Bills as Money Bills,—by adding to them some financial clause. Bills which do not contain such financial provisions only, but include general as well as financial provisions are separately dealt with under Art. 117 of the Constitution.

In England, the Speaker before coming to a decision whether a Bill is a Money Bill or not consults, if practicable, two members to be appointed from the Chairmen's panel at the beginning of the session by the Committee of Selection. A similar provision has not been included in the Indian Constitution and the Speaker makes his decision on his sole authority and discretion. The Speaker in India gives a certificate by endorsing at the foot of the Bills as follows:—"I do hereby certify that this Bill is a Money Bill within the meaning of Art. 110 of the Constitution of India."

*Assent to Bills.* (Art. 111). Every Money Bill when it is transmitted to the Council of States is endorsed under Article 109 which lays down special procedure in respect of Money Bills. Cl. (5) of that Article relates to a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendation, which is to be returned to the House of the People within the period of fourteen days. When the Bill

is presented to the President for assent it is to be done under Art. 111, namely, "When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom; provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they reconsider the Bill or any specified provisions thereof, in particular, reconsider the Bill or any specified provisions thereof and in particular will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses, with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom."

It follows therefore that when a Bill is presented to the President, after its passage in both Houses of Parliament the President is entitled to take any of the following three steps :— (i) He may declare his assent to the Bill; or (ii) He may declare that he withholds his assent to the Bill; or (iii) He may, in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without the message suggesting amendments. But it can be seen that if a Bill is again passed by both the Houses with or without amendments and again presented to the President, it would be obligatory upon him to declare his assent to it.

About Money Bills the Constitution is silent. This is because a Money Bill is introduced only on the recommendation of the President, therefore, if the President recommends it and it is passed by the House of the People, then he is presumed *ipso facto* to have given his assent.

Even with regard to other Bills it can be noted that Art. 111 prescribes no time-limit within which the President is to declare his assent or refusal or to return the Bill. He can thus indefinitely postpone the Bill. By this he would be able to exercise something in the nature of a 'pocket veto', by simply postponing it

indefinitely. It follows therefore that the President has only a *delaying veto* under our Constitution.

In England, the King as an essential part of the Legislature, must give his assent for the enactment of a law, even though it has passed through both Houses. In law, the Crown still possesses the prerogative of absolute veto but it has not been used since 1707, owing to the development of the Cabinet system. In modern times Royal assent is given as a matter of course to a Bill that has been passed by both Houses or by the House of Commons under the provisions of the Parliament Acts of 1911 and 1949.

In the United States, every Bill which has been passed by the House of the Representatives and the Senate, shall, before it becomes a law, be presented to the President. If he approves of it, he shall sign it, but if not, he shall return the same with his objections to that House in which it originated. The Bill so returned is reconsidered and if it is passed by two-thirds of the majority of the House in which it originated and if it is then transmitted to the other House where also it is passed by two-thirds majority the Bill automatically becomes law. It follows that the 'qualified veto' is overridden. But if the Bill fails to obtain two-thirds majority in each House, the veto stands and the Bill fails to become law. But if the President neither signs nor returns the Bill to the House in which it originated within the ten-days' limit and takes no action on it, it automatically becomes law. But if the Congress adjourns before the expiry of the ten-days' limit and if the President does not sign, the Bill fails to become a law. This method of preventing a Bill from becoming a law is known as the 'pocket veto'. The President by simply withholding the Bills presented to him for his signature can easily prevent them from going on the statute-book.

In France, the President of the Republic promulgates laws within ten days after their texts, as finally adopted, has been sent to the Government. In case of a declaration of an emergency by the National Assembly, the interval will be reduced to five days. Within this time limit, the President may request both the Chambers to reconsider the Bill, which request may not be refused entirely. The President of France has only a 'sus-



pensive veto' like that of the American President. But a two-thirds majority is not required to override this veto as it is in the United States. If the Bill is passed again after it was sent back by the President by both the Houses, the President *must* promulgate it, and there is no scope for the President's *pocket veto* to become effective if the National Assembly adjourns within the ten-days' limit as is the case in America.

The nature of the veto power of the President of India is a combination of absolute, suspensive, and pocket vetos. In only one case has the President used his veto power over a Bill passed by Parliament, with regard to the PEPSU Appropriation Bill, to which the President refused to give his assent.

### Procedure in Financial Matters

The financial procedure under our Constitution is based on the pattern prevailing under the English Constitution. The financial procedure in England as stated by Sir E. May's aphorism that, "The Crown demands money, the Commons grant it and the Lords assent to it." It follows that the Crown, that is, the Executive, cannot raise money by taxation, borrowing or otherwise or spend money without the authority of the Parliament. This principle is embodied in Article 265 of our Constitution which lays down that no tax shall be levied or collected except by authority of law.

As the Crown acts through the Ministers, none but a Minister can make a demand for grant, that is, either to raise money or to authorise its expenditure. It is the duty of Government to suggest the levy of a new tax or for the increase of an existing tax and a private member can only suggest a reduction in a particular tax but not the increase in it. This rule applies to general taxes only and not to taxes for local purposes which are popularly known as 'rates'. This principle has also been embodied under Art. 117 (1) which says that the Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of Cl. (1) of Art. 110 shall not be introduced or moved except on the recommendation of the President and the Bill making such provision shall not be introduced in the Council of

States ; Provided that no recommendation shall be required under this Clause for the moving of an amendment making provision for the reduction or abolition of any tax.

Further, it is the privilege of the Government to move that specific sum of money be granted for a specific purpose, and the Commons have no power to increase the financial proposals of the Government. Under our Constitution by Art. 113(3) a similar principle has been embodied. Art. 113 relates to the procedure in Parliament with respect to estimates and Cl. (3) states that no demand for a grant shall be made except on the recommendation of the President.

In England, the House of Lords performs a subsidiary function in the matter of financial legislation. In India under Art. 109 the Upper House (Rajya Sabha) has no power whatsoever with regard to a Money Bill which has been passed by the House of the People and transmitted to it for its recommendations. The delay that the Council of States can cause in the matter of returning the Money Bill to the House of the People is fourteen days only.

### **Stages in the Procedure relating to Financial Matters (Arts. 112-117)**

There are five stages in the procedure relating to financial matters. These stages are—

1. *Presentation of the Annual Financial Statement.* After the estimates have been prepared, the President shall cause the Annual financial statement for the ensuing year to be laid before both the Houses of Parliament. Although it has not been provided in the Constitution as to who will present this statement, the practice followed under the Government of India Act, 1935, that the Finance Minister personally presents the Budget to the Lower House is followed after the commencement of the Constitution.

The Annual Financial statement contains the estimated receipts as well as the expenditure of the Government of Union.

2. *The General Discussion in both Houses.* After the presentation of the Budget a general discussion of the statement as a whole is taken up and every item of expenditure is taken up

in this general discussion. But this discussion confines itself to general discussion relating to policy involving review and criticism of the administration of the Departments concerned.

3. *Voting of the demands by the House of the People.* This is the right of the House of the People alone for the Council of States has no further say in the matter beyond the general discussion.

In the House of the People after the general discussion is over, the estimates are submitted in the form of *demands for grants* on the particular heads, followed by a vote of that House. The House of the People may assent to the demand; or refuse it; or in the alternative reduce it. *But the House has no power to increase the demand or to alter the destination of a grant or to put any condition as to the appropriation of the grant.* It should be remembered that the Lower House has the exclusive right of granting supplies.

4. *The Appropriation Act.* Under the Government of India Act, 1935, there was no provision for any Appropriation Act or any other legislation finally embodying the grants voted by the Legislature and authorising the issue of the money so granted, from the Public revenues. The Governor-General had discretionary power to override the adverse vote of the Legislature by his certificate, on the ground that his special responsibilities would be affected by the adverse vote.

Under our Constitution, the President has no power to override the vote of the House of the People. The grants as voted by this House will be embodied in Money Bill and passed as such. This Act is known as the 'Appropriation Act' and is the sole legal authority for the appropriation of money from the Consolidated Fund of India.

5. *The Finance Act.* Similarly the new taxing proposals of the Budget will be embodied in another Bill and passed as the Annual Finance Act.

### **Annual Financial Statement (Arts. 112-113 & 117(3))**

This expression is borrowed from Sec. 33(1) of the Government of India Act, 1935, for which the popular word is 'Budget'. Besides the Budget speech the Finance Minister makes

a general review of the economic conditions prevailing in the country with particular reference to foreign exchange matters, and monetary position of the country in the international markets. *The Budget to a very considerable extent indicates the policy of the Government not only towards economic matters, but also with regard to social legislation and the distribution of wealth for the purposes of raising the very low standard of life of the people at large.* For the purposes of Railways a separate Budget is presented by the Minister and one Appropriation Act is passed for the general Budget and another for the Railway Budget.

The Annual Financial Statement relates only to the Consolidated Fund, for, no legislative sanction is required for payment out of Public Account (Please refer to Arts. 266, 113 (1) and 114(3) ).

It follows, therefore, that the Annual Financial Statement is a statement of the estimated receipts and expenditure of the Government of the Union for the financial year, which is one year's period from 1st April of a year to 31st March of the next year. Under Art. 112(1) the President shall, in respect of all financial matters cause the Annual Financial Statement to be laid before both the Houses of Parliament. This Statement shall show separately the sums required to meet the expenditure charged upon the Consolidated Fund of India; and any other expenditure proposed to be made from the Consolidated Fund of India, and shall distinguish expenditure on revenue account from other expenditure.

### **Expenditure Charged on the Consolidated Fund of India (Art. 112(3)).**

The expenditure charged on the Consolidated Fund of India is similar in nature to the 'Consolidated Fund Services' of England, and the 'expenditure charged on the revenues of the Federation' in Sec. 33(1), (3) of the Government of India Act, 1935. Under Art. 112(3) the following items of expenditure can be charged on the Consolidated Fund of India, namely :—

1. The emoluments, allowances, salaries, pensions, etc., payable to the President; the Chairman and Deputy Chairman of the

Council of States and the Speaker and the Deputy Speaker of the House of the People; Judges of the Supreme Court and High Courts and lastly, Comptroller and Auditor-General of India.

2. Debt charges for which the Government of India is liable including interest, sinking fund charges, redemption expenditure relating to the raising of loans and the services and redemption of debt.

3. Any sums required to satisfy any judgement, decree, award, of any Court or a Tribunal.

4. Any other expenditure declared by this Constitution or by Parliament to be so charged.

5. Lastly, expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament.

There is one small point of special procedure with respect to a Bill involving expenditure from the Consolidated Fund of India. Art. 117(3) says—"A Bill, which if enacted and brought into operation would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the Parliament has recommended to that House the re-consideration of the bill."

### **Procedure in Parliament, as to Estimates (Art. 113)**

The Act prescribes a very short procedure as to estimates as under:—

(1) Expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament but the Parliament will have power to discuss them. This clause is a departure from the English precedent, but follows the Government of India Act, 1935, which allowed discussion on all items of expenditure charged on the Consolidated Fund of India. The Houses only get an opportunity to criticise the conduct or administration of the services which are charged each year.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demand for grants to the House of the People and this House shall have the power to assent or refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

The limitations imposed by the latter part of this clause follows from the principle underlying clause 3, that no demand for a grant can be made except on the recommendation of the President, even though, the estimates are submitted to both the Houses of Parliament, it is difficult to scrutinise them or suggest economies. This business is, accordingly done by the Committee on Estimates, which goes on examining the different estimates throughout the financial year. This Committee consisting of 25 members elected by the House every year from amongst its members according to the principle of proportional representation by means of the transferable vote. No minister can be appointed to this committee and if a member is appointed a minister, he shall cease to be a member of the committee from the date of his appointment.

This committee has various functions to perform which include :—

(a) to report what economies, improvements in organisations, efficiency, or administrative reforms consistent with the policy underlying the estimates may be effected;

(b) to suggest alternative policies in order to bring efficiency and economy in administration;

(c) to examine whether the money is well laid down within the limits of the policy implied in the estimates ;

(d) to suggest the form in which estimates are to be presented to Parliament.

What is noticeable in this clause is the wider powers of our Committee on Estimates as compared with those of the same Committee in England. In England this Committee can only suggest economies consistent with the policies implied in the estimates. But our Committee has additional powers to suggest *alternative policies* also for ensuring efficiency and economy in the administration. From this point of view the Committee on Estimates does very useful work before the estimates are examined in Parliament.

3. No demand for a grant shall be made except on the recommendation of the President. This clause ensures the principle that the executive shall be solely responsible for the ex-

penditure of public money whether that takes place through a Money Bill, or, indirectly, through some general statute involving expenditure.

### **Appropriation Bills (Arts. 114 and 115)**

An Appropriation Bill is one which provides for the appropriation out of the Consolidated Fund of India of all moneys required to meet the grants made by the House of the People and the expenditure charged on the Consolidated Fund of India but not exceeding the amount shown in the statement previously laid before Parliament. The objects of an Appropriation Act under Art. 114(3) and Art. 266 (3) is to provide that no money shall be appropriated out of the Consolidated Fund except in accordance with law and the Appropriation Act, provides that law.

### **Procedure as to an Appropriation Bill (Art. 114(2) )**

In this connection three points are significant.

(1) The first is in connection with an Appropriation Bill which says that no amendment shall be proposed to any such bills in either House of Parliament which will have the effect of varying the amounts or altering the destinations of any grants so made and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(2) Secondly, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

(3) Thirdly, if the amount authorised by Art. 114 is found to be insufficient for the purposes of that year and when a need has arisen during the financial year for supplementary or additional expenditure upon some new service not contemplated in the Annual Financial Statement for that year or if any money has been spent on any service during a financial year in excess of the amount granted for that year, the President shall cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure. It follows that the Consolidated Fund is the reservoir of all the revenues of

the Government of India and an Appropriation Act is the only outlet from this reservoir. Art. 226(3) also reiterates this provision.

The words 'subject to the provisions of Arts. 115 & 116', provide that not only the Annual Appropriation Acts but also similar Acts passed to provide supplementary, or exceptional grants, votes on account, or votes of credit shall be authority for appropriation of moneys out of the Consolidated Fund. With regard to the State Legislature a similar provision has been made in Art. 204.

### **Supplementary, Additional or Excess Grants (Art. 115)**

The President under this Article shall cause to be laid before both the Houses of Parliament another statement showing the estimated amounts of the expenditure or cause to be presented to the House of the People, a demand for such excess, as the case may be. Whereupon the provisions of Arts. 112, 113 and 114 shall have effect in relation to any such statements and the expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India, to meet such expenditure or the grant in respect of such demands as they have effect in relation to the Annual Financial Statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grants.

The need for an excess grant would always arise whenever a department has carried expenditure upon a service beyond the amount granted to that service during the financial year for which the grant was made. In England even such excess grants become almost necessary because during the last weeks of a financial year, it may not be possible to get a supplementary estimate voted by Parliament, owing to shortage of time.

An excess demand differs from its supplementary demand because the former is made after the expenditure has actually been incurred, and after the financial year to which it relates has expired. For the excess spent there is no estimate but it is presented in the form of a demand for the excess.



The procedure for the passing of supplementary estimates and excess grants is the same as that for demands for the annual grants subject to such adaptations as the Speaker may deem necessary. The debate on the supplementary grants is confined to items constituting the same and no discussion is to be raised on the original grants nor the policy underlined in them, save in so far as that may be necessary to explain or illustrate the particular items under discussions. It happens that some times though a supplementary estimate required for sanction of expenditure on a new service, additional funds are not actually required by the Department since the Department might have made some saving under a sanctioned head which might be utilised for the new service with the sanction of Parliament. This is known as the demand for a token vote.

### **Votes on Accounts, Votes of Credit and Exceptional Grants (Art. 116)**

Apart from the normal demands for grants, the President under the Constitution is authorised to place before Parliament, if he deems fit demands or additional or supplementary or excess grants and the same procedure must be adopted in respect of them also as in the case of the normal annual demands for grants. The House of the People is thus empowered to make advance grants or even exceptional grants to which also the normal procedure for grants or appropriation will apply.

*Votes on Account.* Art. 116(1) (a) The House of People shall have the power to make any *grant in advance* in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure for the voting of such grant and the passing of the law in accordance with provisions laid down in Art. 114 in respect to that expenditure.

This is an English practice and is a purely political term. It means provision for grants in advance to be made by the House for enabling the departments to carry on until the passing of the Annual Financial Statement is complete. Votes on account may be passed on any day subsequent to the presentation of the budget.

During the debate of a Vote on Account, members may in-

vite attention of Government to matters of policy or ventilate their grievances either through general discussion or through cut motion. But in practice such a demand is sometimes passed as a formal matter, by consent of the House, depending on the urgency of the grant and the fact that there would be ample opportunity for discussion when Budget is presented to the House.

*Votes of Credit.* Art. 116(1) (b). The House of the People shall also have power to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement. This method is therefore resorted to when an unexpected demand for money is made on account of some national emergency and the House would grant the money required by a Vote of Credit passed in the same way as in the annual grants.

*Exceptional Grants.* Art. 116(1) (c). The House of the People shall also have the power to make an exceptional grant which forms no part of the current service of any financial year. The Parliament shall also have power to authorise by law the withdrawal of money, from the Consolidated Fund of India for the purposes for which the said grants are made. The procedure for votes of credit and exceptional grant shall be the same as demands for grants, subject to such adaptations as the Speaker may deem necessary.

### **Rules of Procedure in the Houses of Parliament (Art. 118;**

As in England, each House of Parliament has the exclusive right to make rules for regulating its procedure and conduct of business. One of the objects of such rules is to economise time and to carry on orderly conduct of the proceedings leading to a determination of the will of the majority of the House on the questions before it. In England each House makes a number of *Standing Orders*, the object of which is to make an economic use of time, to allocate time for different classes of business and the course of procedure and also to place Parliamentary procedure upon a well regulated system instead of leaving

it entirely to practice and usage. In the United States, Sec. 5(2) of Art. I lays down that each House may determine the rule of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. All other Constitutions have laid down specific rules for the purpose of determining the conduct of business in the House.

The Houses of our Parliament have made definite provisions as to how the consent of the House for relaxation or suspension of the Rules of Procedure in relation to any particular matter is to be expressed. These rules are liable to be amended by the House at any time. For this purpose, each House has set up a "Rules Committee" with the task of recommending to the Speaker or Chairman 'any amendments or additions to the rules as may be deemed to be necessary.'

*General Rules of Debate.* These rules are almost the same as laid down by the House of Commons in England. Members are prohibited from including certain things in their speeches, particularly making a personal charge against any member or using offensive language or expressions about the conduct of proceedings of Parliament or using President's name for the purpose of influencing the debate. Members are expected not to abuse the privilege of freedom of speech in Parliament. Further, a member is expected to deliver a brief speech and eschew irrelevance or repetitions so as not to waste the time of the House.

*Unparliamentary Expressions.* All those expressions which offend against any of the rules stated above or in any way lower the dignity of the House cannot be used and it is the right of the Speaker to intervene when an unparliamentary expression is used by a member, who is asked to withdraw the same. Expressions used against another member, any expression which imputes motives to a member or charges him with falsehood or is in any way abusive is unparliamentary. But to suggest that a member is exploiting a certain situation or to say that the House is a 'gas-chamber'; 'imbecile'; 'a monkey House' are unparliamentary expressions. If the Chair is of the opinion that a word or words used in a debate are more or less defamatory or indecent or unparliamentary, he may in his discretion, order that such words be expunged from the proceedings.

As in England, a member is not allowed to read a written speech, but he may only refer to his notes or may quote from books or documents. In his speech he must always address the Chair and cannot address another member as 'you'. He is expected to confine his speech to the questions upon which the will of the House is sought to be ascertained. Of course, there are few exceptions to this rule, particularly when a member seeks to offer a personal explanation with the permission of the Chair. A member is allowed to speak in a debate only when he is called upon to speak by the Chair, and for this purpose he is expected to *catch the Speaker's eye*. In the House of Commons, there is a convention that a member who wishes to make his 'maiden speech' is allowed priority in the debate.

While a member is 'in possession of the House' other members are not expected to interrupt him in any disorderly manner by either making running commentaries, hissing, noises or employing other disorderly expressions in order to make the member's speech inaudible. If there is any breach of the rules, it is the right of every member to call the attention of the Chair to such breaches of order or of the rules by putting it to the Chair whether there has been such a breach. This is called raising a 'question' or a 'point of order.' A point of order is, thus, a device for the proper enforcement of the rules of the House and the Chair is expected to give his decision on this point of order.

Members have a right to put questions to a Minister in order to obtain further information on a matter of public importance which is within the special knowledge of the Minister to whom he addresses such questions, and, thus, to "turn a searchlight upon every corner of the public service". As a matter of fact the first hour of every sitting of either House is usually devoted to questions and their answers. Different kinds of questions can be put, for example, (1) questions with usual notice; (2) short-notice questions; (3) supplementary questions; and (4) starred and unstarred questions. With regard to (1), unless the Chairman or Speaker allows, no question can be asked without giving 10 clear days' notice. With regard to (2), if the Chairman or the Speaker is of the opinion that the question is

of an urgent nature, then the Minister would agree to answer the question at short-notice. With regard to supplementary questions, they are usually asked for the purpose of further elucidating any matter of fact regarding which an oral answer has been given, if allowed by the Chairman or the Speaker. With regard to the fourth type of the question a member who desires an oral answer to his question shall mark it with an asterisk. If there is no such mark the question will be placed on the list for written answer and is termed as unstarred question.

With regard to the admissibility of questions, that is to be determined by the Chairman or the Speaker as the case may be. Generally, a question is allowed if it has been asked for the purpose of obtaining information. A member who wishes to ask the question is expected to be in his seat when his name is called out by the Chair. He must rise from his seat while putting his question, with reference to its number on the list. If the member is absent when called by the Chair, another member may be authorised to ask that question. But in case of a short-notice question the rule is that the member putting the question must be in his seat to read the question when called by the Chair. When the question hour is fixed, the Minister-in-Charge is expected to be present in the House, but for 'unavoidable reasons' or the nature of the question, another Minister may be allowed to answer the question, provided he is prepared to answer supplementaries. The Minister may even refuse the answer on the ground of public interest, though the member is entitled to know the reason why a Minister refuses to answer a particular question.

### **Language to be Used in Parliament (Art. 120)**

The language for the transaction of business in Parliament, shall be Hindi or English, subject to the provisions of the Constitution in respect of the official language. Unless Parliament otherwise provides at the expiration of 15 years from the commencement of the Constitution, this language shall be Hindi. It is provided that the Speaker, or the Chairman, as the case may be, may permit any member having inadequate knowledge of Hindi or English to address the House in his mother tongue.

## CHAPTER 8

### THE UNION JUDICIARY

#### The Position of the Supreme Court of India

The Supreme Court is considered as a guardian of the Constitution. It is considered as an essential element in a federal constitution for it is at once the interpreter and guardian of the Constitution and the Tribunal for the determination of disputes between the constituent units of the Federation. When the Federation is in the nature of a *treaty* between the component units and the Constitution sets up a double Government and a double allegiance as in the United States of America, the duty of the Supreme Court is further accentuated. Though our Federation is not in the nature of a *treaty* between the component units, there is nevertheless a division of legislative as well as administrative powers between the Union and the States. Under Art. 131 our Supreme Court in its original and exclusive jurisdiction has the power of determining justiciable disputes between the Union and the States or between the States *inter se*, a provision which differs from Art. III, Sec. 2(1) of the American Constitution as well as Section 75 of the Australian Constitution. In this case our Supreme Court has no original jurisdiction to decide disputes between the residents of different States or between a State and a resident of another State. Such disputes can come up before the Supreme Court only in appeal, if the provisions relating thereto are satisfied.

Like the House of Lords in England, *our* Supreme Court is the final Appellate Tribunal of the land, and in some respects, the jurisdiction of *our* Supreme Court is even wider than that of the House of Lords.

As against unconstitutional acts of the executive the jurisdiction of the Supreme Court is similar to that under different Constitutional systems. One of the aims of *our* Constitution-makers

was to establish an independent judiciary which has the task of protecting the rights given to the citizens. It is a striking departure from the English Constitution. The English Parliament can pass any Act and the Judiciary cannot pass a corrective to that Act. In our country the Constitution is supreme and sovereign and the Parliament cannot encroach upon or touch the rights, much less it can change the fundamental rights. These rights are supreme and for this purpose *our* Constitution-makers have provided for an independent judiciary. In Switzerland, the power to determine the validity of federal laws is not given to the Federal Tribunal but is given to the people themselves. Even in the United States, the Constitution itself does not specifically vest in the Judiciary any power to declare laws enacted by the Legislature to be unconstitutional. This power has been deduced by the Supreme Court from the power given to it under the Constitution. It is only since the case of *Marbury v. Madison*, 1803, that every judge in the United States has a duty to treat any enactment which violates the Constitution as void.

Under Art. 124 *our* Constitution establishes a Supreme Court consisting of a Chief Justice of India and seven other Judges who are appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States.

A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and has been for at least five years a Judge of the High Court or two or more such Courts in succession or has been for at least ten years an advocate of a High Court or two or more such Courts in succession or is, in the opinion of the President, a distinguished jurist.

In America, the Supreme Court was established by the Judiciary Act of 1789 with the Chief Justice and five associate Judges, but this number was raised to nine in 1869. The Supreme Court of Canada was established in 1875 and has since 1949 nine Judges sitting. In Australia the Supreme Court is called 'the High Court of Australia' and consists of seven Judges including the Chief Justice.

Before a Judge of the Supreme Court enters upon his office,

he must make and subscribe before the President an oath or affirmation in the form laid down in the Constitution.

He shall not plead or act in any Court or before any authority within the territory of India : (Art. 124(7)). Every Judge of the Supreme Court is entitled without payment of rent to the use of an official residence.

*How Removed.* (Art. 124(4) and (5)). A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than 2/3rds of the members of that House present and voting has been presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. For this purpose Parliament may regulate by law the procedure for the presentation of an address and for the investigation and proof of the misbehaviour and incapacity of a Judge under Cl. 4.

*Salaries, etc., of the Judges.* The salary of the Chief Justice is Rs. 5,000 while that of the other Judges is Rs. 4,000 per month as specified in the Second Schedule. Over and above this, every Judge is entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament. These privileges and allowances once laid down cannot be varied to the disadvantage of a Judge after his appointment. However, during a Proclamation of Emergency, the President has the power to reduce the salaries and allowances of the Supreme Court Judges under Art. 360 of the Constitution.

The above provisions ensure to a very great extent the independence of the Judiciary in India. Art. 374 lays down that the Judges of the Federal Court holding office immediately before the commencement of this Constitution shall become on such commencement the Judges of the Supreme Court with all the privileges as laid down in Arts. 124 and 125 of the Constitution.

*Appointment of Ad Hoc Judges* (Arts. 127-128). If at any time there should be no quorum of the Judges of the Supreme



Court available to hold or continue any session of the Court, the Chief Justice of India may, (with the previous permission of the President and after consulting the Chief Justice of the High Court concerned), request in writing the attendance at the sittings of the Court, as an *ad-hoc* judge for such period as may be necessary, a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court. Such a Judge shall have all the jurisdiction, powers and privileges, and shall discharge the duties of a Judge of the Supreme Court.

By Art. 128 the Chief Justice of India may, with the previous consent of the President, request any person who has held the office of the Judge of the Supreme Court, or of the Federal Court to sit and act as a Judge of the Supreme Court. If such a person consents to do so. he shall, while so sitting and acting, be entitled to such allowance as the President may by order determine and shall have all the jurisdiction powers and privileges of a Judge of that Court, but shall not otherwise be deemed to be a Judge of that Court.

## **THE SUPREME COURT OF INDIA**

**(Arts. 32, 129-137, 143, 145 & 363)**

*Our* Constitution has provided for an independent judiciary in order to see that the fundamental rights of the citizens are properly safeguarded. The Supreme Court has performed this function very satisfactorily. It sits ordinarily in Delhi (Art. 130). Under Art. 129 the Supreme Court is a court of record and has all the powers of such a Court including the power to punish for contempt of itself. A Court of Record is a court whose acts and proceedings are enrolled for a perpetual memorial and testimony and which has authority to fine and imprison for contempt of its authority.

### **Three Jurisdictions of the Supreme Court**

The Supreme Court exercises three jurisdictions, namely, *Original, Appellate and Advisory or Consultative jurisdictions.*

1. *Original Jurisdiction of the Supreme Court.* (Arts. 32, 131, 143 & 363). The Supreme Court shall have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) between two or more States,

if and in so far as the dispute involves any question, whether of law or fact, on which the existence or extent of a legal right depends. But the original jurisdiction does not cover a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant or similar instrument which was entered into or executed before the commencement of this Constitution and has continued in operation after 26th January, 1950. Further, no case will lie in a dispute to which any State is a party, if the agreement, etc., provides that the said jurisdiction shall not extend to such a dispute.

*Scope of the Original Jurisdiction of the Supreme Court.* The Supreme Court under Art. 131 is not a Court of ordinary original jurisdiction in all matters and between all parties. Hence the original jurisdiction of the Supreme Court is strictly limited by the conditions laid down in Art. 131. In order to invoke this limited jurisdiction of the Supreme Court, *three* conditions must be satisfied :

(i) The parties to the dispute must be specified in clauses (a) to (c) above. It will not entertain suits to which citizens are a party.

(ii) The dispute must involve a question relating to a *legal right* as distinguished from *political rights* over which the Court has no jurisdiction. The validity of a law of the Union or of a State can be considered as a legal right.

(iii) The question must not be one which is excepted by the provisions to Art. 151 or by any other provisions of the Constitution.

By Art. 32 the Supreme Court is empowered to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them

for the enforcement of fundamental rights. This jurisdiction is concurrent with the High Courts of States who have also been granted similar powers. Art. 139 also empowers the Supreme Court with exactly similar powers when it says that Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature as mentioned above or any of them.

2. *The Appellate Jurisdiction of the Supreme Court.* Under this jurisdiction the Supreme Court has the power to hear appeals which involve the interpretation of the Constitution. It is immaterial whether these appeals are civil or criminal or with regard to other proceedings. Secondly, there are appeals in civil or criminal cases from the different High Courts.

*Appeals to the Supreme Courts when allowed* (Arts. 132-37). The Supreme Court hears appeals from the High Courts in certain cases, both civil and criminal. Under Art. 132 the Supreme Court has appellate jurisdiction with regard to certain cases; under Art. 133 it has appellate jurisdiction with regard to appeals from High Courts in civil cases, while under Art. 134 it hears criminal appeals. The Supreme Court may in its discretion grant special leave to appeal from any Judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal, in the territory of India. The Supreme Court has also powers to *review* any Judgment pronounced or order made by it, under Art. 137 of the Constitution.

*Appeals involving Constitutional Questions.* If any substantial question of law as to the interpretation of the Constitution is involved, the Supreme Court can always hear an appeal from any judgment or decree or final order of any High Court provided the High Court certifies to the effect that a substantial question of law as to the interpretation of the Constitution is involved; or the Supreme Court itself grants special leave on the above ground, where the High Court has refused such a certificate. It follows that the decision of the High Court with regard to the validity of an Act or deciding any question involving the interpretation of the Constitution, is not final. The following *may be* considered as instances where a question of Constitutional interpretation is involved :—

(a) A suit by a dismissed Government servant against Government for relief on the ground that his dismissal was illegal owing to contravention of Art. 310.

(b) A suit challenging a statute as *ultra vires*.

(c) A conviction under a law which is challenged as *ultra vires*.

(d) Cases directly involving the interpretation of some particular provision of the Constitution, unless the point has already been settled by a previous decision.

(e) Whether in a case of infringement of a fundamental right the power conferred by Art. 226 is coupled with a duty.

(f) Whether a law or an executive order contravenes any fundamental right.

The following are not considered as fit cases involving questions of law as to the interpretations of the Constitution :—

(a) The question of the validity of the appointment of a Judge or a Chief Justice.

(b) Wrong interpretation of an Act even though the writ of *mandamus* or *habeas corpus* has been refused on such interpretation.

*Appeals on other grounds.* By this is meant that when an appeal comes to the Supreme Court on the strength of a certificate under Art. 132(1), the appellants are not entitled to challenge the propriety of the decision appealed against on a ground other than that on which the certificate was given except with the leave of the Supreme Court itself. In case of a grave miscarriage of justice, for example, where a Court in a criminal matter relied upon an admission which was not on the record and convicted the accused, the Supreme Court may grant the permission to argue on some other ground.

*Appeals from High Courts in Civil Matters (Art. 133).* An appeal to the Supreme Court shall lie from any judgment, decree or final order in a civil proceeding of a High Court in India if that Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal is twenty-thousand rupees ; or

(b) that the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court.

Under this Article an appeal by special leave on constitutional matters will lie apart from special leave under Art. 136. But this leave is granted under following conditions—

1. The subject of appeal is a judgment, decree or final order.

2. The High Court grants the necessary certificate for such an appeal. However, there is no judgment or order where the function of the Court is merely advisory or consultative. Thus, there is no application of Art. 133 to a decision of the High Court, on a reference under Sec. 66 of the Indian Income-Tax Act.

The *test* for determining whether an appeal can lie from judgment, decree or final order is to be decided *with reference* to each suit. It is immaterial if the Court decides an important or vital issue in a case, unless the decision puts an end to the suit. Hence, no certificate under Art. 133(1) is available against the following orders :—

1. An order of the High Court demanding an execution petition for further proceedings, holding that it is not barred by limitation.

2. An order setting aside a compromised decree and directing the trial Court to dispose of the suit on merits.

3. An order setting aside an order under sec. 34 of the Arbitration Act, 1940.

When a certificate has been granted by the High Court under Art. 133, the Supreme Court would not be precluded from entertaining a preliminary objection that appeal does not lie under that Article. It means, that certificate granted by the High Court is not conclusive as to the right to appeal and it is open to the Supreme Court to see whether the case fulfils the requirements of the Article. It may thus refuse to entertain the appeal in spite of the certificate. In order to appeal to the Supreme Court

a separate application is required and the prayer cannot be made in the alternative in an application for review of judgment.

As to the question of law we mean law in this context the *general law and not merely the statute law*. A question of law is to be distinguished from a question of fact. It is sometimes difficult to separate questions of law and of fact and we can only do so by reference to each case as it comes up. For example, the construction of a document and the legal inference from the same, or whether a document was presented for registration, are declared to be questions of law.

On the other hand, the following have been held to be the questions of fact :—

(a) Whether a fact has been proved when evidence for and against has been properly received.

(b) Whether a statutory presumption has been rebutted.

(c) The existence or prevalence of a custom. But the finding whether the facts proved satisfy the requirements of law in order to establish a custom is a question of law.

(d) With regard to the taking of accounts between a principal and an agent is the matter of fact, but questions relating to principle relating to accounts is a question of law.

As we saw above, the question of law must be a substantial question of law which is required for the purpose of obtaining a certificate to appeal to the Supreme Court. A question of law, therefore, is substantial if the decision turns one way or the other on the particular view taken of the law, for example, whether a judgment would operate as *res judicata* in a case,—though the decision may be unimportant to others.

When the question decided on one principle has been decided by a High Court for the first time, it is *not* a sufficient reason for refusing the certificate that the High Court is satisfied that the decision is correct. But where there is divergence of opinion amongst the High Courts, then there is a substantial ground for appeal to Supreme Court as the final decision in the matter involves a substantial question of law, the necessary leave can be granted under Art. 133.

### Appellate Jurisdiction of Supreme Court in regard to Criminal Matters (Arts. 134 and 136).

An appeal to the Supreme Court shall lie from any judgment, final order or sentence in a criminal proceeding of a High Court in India if that High Court—

(a) Has, on appeal, reversed an *order of acquittal* of an accused person and sentenced him to death; or

(b) Has, withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death (under Sec 526 of Cr. P.C.); or

(c) Certifies that the case is a fit one for appeal to the Supreme Court.

However, under Art. 136 Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order (other than an order made under any law relating to Armed Forces) in any cause or matter passed or made, by any Court or Tribunal in India. This power is to be exercised by the Supreme Court sparingly and in exceptional cases only, that is, the certificate is granted only where there is a substantial question of law or there has been an infringement of the essential principles of justice or there is a matter of great public or private importance. The reason is that Art. 134 intends that except in certain cases, the High Courts in the respective States should ordinarily be the final Courts of appeal in criminal matters. (*Public Prosecutor v. Gopalan*). The following questions have been held to be fit for granting a certificate under Art. 134(1)(c):

1. Whether an Appellate Court at the time of hearing an appeal under sec. 411 of the Cr. P.C., is entitled to go into the validity or otherwise of the order granting leave to appeal by the trial Judge.

2. The point that the Magistrate decided under sec. 145 of the Cr. P. C., the question of possession with reference to title, if such question was not raised before the High Court in revision.

3. Cases of suspension of Advocates from practice or other

disciplinary action because such cases concern the future practice of the Advocate.

On the other hand, a certificate under Art. 134(1)(c) has been refused in the following cases :—

1. Where a Magistrate took cognizance of a case on a Police report of a likelihood of a breach of the peace.
2. Where merely the construction of a particular statute is involved.
3. Irregularity in choosing assessors.

As to the question, who may apply for the certificate, it has been held that an application under Art. 134(1)(c) can only be made by the accused person and by no third party, not even by his father.

### **Other Powers of the Supreme Court**

Under Art. 135, the Supreme Court has jurisdiction and powers with respect to any matters to which the provisions of Art. 133 or Art. 134 do not apply if jurisdiction empowers in relation to that matter were exerciseable by the Federal Court immediately before the commencement of this Constitution under any existing law. Further, under Art. 374(2) it is provided that all suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same effect and force as if they have been delivered or made by the Supreme Court. Under Art. 374(4), on and from the commencement of this Constitution the jurisdiction of the Privy Council in a State shall cease and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to and disposed of by, the Supreme Court. Under Art. 137 the Supreme Court has power to review any judgment pronounced or order made by it, subject to the provisions of any law made by Parliament or any rule made under



Art. 145. Art. 138 enlarges the jurisdiction of the Supreme Court with respect to any other matter in the Union List as Parliament may by law confer and the Supreme Court shall have such further powers with respect to any matter as the Government of India and Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court. Under Art. 139 the Supreme Court has power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purpose other than those mentioned in Cl. 2 of Art. 32. Under Art. 140, Supreme Court has such supplementary powers as the Parliament may by law confer, with regard to any matter not inconsistent with any of these provisions of the Constitution.

*Law Declared by Supreme Court is binding on all Courts.* The law declared by the Supreme Court shall be binding on all Courts within the territory of India. Further, under Art. 142, the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such a manner as may be prescribed by or under any law made by Parliament. It has also all and every power to make any order for the purpose of securing the attendance of any person, the investigation or punishment of any contempt of itself, subject to the provisions of any law made in this behalf by Parliament.

### **Consultative (or Advisory) Jurisdiction of the Supreme Court (Arts. 143 and 145).**

If at any time it appears to the President that a question of law or fact has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon. This power to consult the Supreme Court is known as the Consultative power of the President. The Constitution is

however silent on the question as to whether the opinion of the Supreme Court is binding on the President or not.

With regard to this advisory jurisdiction of the Supreme Court, there are two opinions. According to one, it is undesirable to turn the highest Court of the Country into a consultative department of the executive of the day. On the other hand, the other school is of the opinion that there is nothing wrong in such a procedure, for Sec. 213 of the Government of India Act, 1935, contained a similar provision. There is a similar provision in Sec. 4 of the Judicial Committee Act of 1934. "There has been considerable difference of opinion among jurists and political thinkers on the expediency of placing on the Supreme Court an obligation to advise the head of the State on difficult questions of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under sec. 213 of the Act. Having given our best consideration to the arguments pro and con, we feel it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be invoked, and if we propose, the Court is to have strength of ten or eleven Judges, a pronouncement by full court may well be regarded as authoritative. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by the full Court." It may be noted that the Supreme Court of the United States refused to give advice to the American President when a request was made to that effect.

The following points may be noted with regard to the advisory jurisdiction of the Supreme Court :—

1. It is neither obligatory upon the Supreme Court to give its opinion under this Article whenever the President makes the reference, nor for the President to act upon the opinion pronounced by the Supreme Court.

2. The Advisory opinion given under this Article is not a judgment in the true sense of the word.

3. It is doubtful whether an opinion given under this Article comes within the purview of Art. 141, but the opinion rendered by the Supreme Court in the *Delhi Laws Act* case has been

freely referred to and followed by different High Courts. So far, this has been the only case of reference under Art. 143 of the Constitution.

### **COMPTROLLER AND AUDITOR-GENERAL OF INDIA** (Arts. 124, 148-151, 377 & Sch. 3)

The Comptroller and Auditor-General is a very important official of the Union. He is known as the watch-dog of the Union and States' accounts. His appointment is made by the President by warrant under his hand and seal, and after his appointment he has to make and subscribe before the President or any person appointed in that behalf by him, an oath or affirmation in the form laid down in the Constitution. He receives a monthly salary of Rs. 4,000 per month, which shall be charged upon the Consolidated Fund of India (Art. 148(6)). He is not eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

*How removed.* (Arts. 124(4) and 148(1)). He can only be removed from office in the same manner and on similar grounds as the Judge of the Supreme Court (Art. 148(1)). It follows, therefore, that he cannot be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than 2/3rds of the members of that House present and voting, has been presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity (Art. 124(4)).

*His duties and Powers* (Art. 149). He shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament, and until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively. Under Art. 150, the accounts of the Union and the States shall be kept

in such form as the Comptroller and Auditor-General of India may, with the approval of the President prescribe.

### **Audit Reports (Art. 151)**

The Reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament; and his report relating to the accounts of a State shall be submitted to the Governor or Rajpramukh of the State who shall cause them to be laid before the Legislature of the State.

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## CHAPTER 9

### THE STATES IN PARTS 'A' AND 'B' OF THE

#### FIRST SCHEDULE (Arts. 152-238)

The essential principle of a federation 'applies to India as to other Federal States, namely, that in respect of subjects which are allotted by the Constitution to the States, the States shall have power to pass laws and administer them. This principle is, however, subject to important qualifications, as follows:—

1. The Constitution authorises the Governor of a State to reserve a Bill for the consideration of the President. The President of the Union may or may not agree with the wishes of the State legislatures. But the Governor of a State in reserving a Bill for the consideration of the President, necessarily acts on the advice of his Ministers who are responsible to the legislature, hence this provision cannot be considered as an imposition from above.

Further, the Governor can reserve any Bill for the consideration of the President which in his opinion would, if it became law, so derogate from the powers of the High Court as to affect its independence. The very existence of this salutary provision acts as a brake to the legislature of the State from attempting to interfere with the administration of justice.

Under Art. 31 of the Constitution a State Legislature cannot acquire a property for public purposes unless the Bill for such an acquisition has not been reserved for the consideration of the President and has received his assent.

2. The previous sanction of the President is also necessary for the introduction of certain types of Bills into the State Legislature and for promulgating certain types of Ordinances.

3. The Union Parliament has also power to make any law for implementing any treaty or agreement with other countries,

even though the subject of such a treaty may fall within the State List. For example, the power to make laws in order to implement a resolution passed at an International Convention relating to some aspect of public health, is with the Union Parliament, although this subject is in the State List. This power has been given to the Union in order to obviate the difficulties that have arisen in other Federations, particularly in Canada, where the Centre has not been provided with such a power.

4. The Union Parliament has also the power to legislate on a specified State subject, provided if a particular State in its legislature passes such a resolution; or if the subject relates to the whole of India, and if the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make such a law. For example, a subject like Agriculture during a period of wide spread agricultural depression in several parts of India may assume national importance requiring legislation on a national scale.

5. During emergency when the security of India is threatened either by War or external aggression or internal disturbance, the President may by a Proclamation to that effect empower the Union Parliament to make laws even in respect of the matters enumerated in the State List.

6. It is laid down that the executive power of every State must be so exercised as to ensure compliance with the laws made by Parliament, so as not to impede or prejudice the executive power of the Union. In case of the failure of the normal constitutional machinery in the State, the President may assume to himself all or any of the executive functions of the Government of that State.

7. With regard to the distribution of revenues between the Union and the States, the Union has in fact the deciding voice, and by means of grants-in-aid to such States as require the assistance, the Union is in a position powerfully to influence the policy of the States.

8. The President has the power to appoint Governors of States and above all the Union is charged with the duty of protecting every State against external aggression and internal dis-

turbance and of ensuring that the Government of every State is carried on in accordance with the provisions of the Constitution.

Taking all these facts we may be forced to the conclusion that there is over-centralisation and that, as stated above India could have avoided federalism. This criticism is not quite correct because the foundations of the federal system in India were laid in the Government of India Act, 1935. All Constitutions are the heirs of the past and from that point of view the Act of 1935 was a bad precedent for the Constitution of an independent country. The primary object of the Act of 1935 was *not* to create a Constitution as such, but to bring about a gradual transfer of power. India, like Canada enacted the State Constitutions in the Federal Constitution, and the States had no independent powers under the Act of 1935 and hence they had to accept whatever type of Constitution that was given to them. The Centre does exercise an increasing measure of control over the federating units in emergencies only, but to a lesser extent even in normal times in almost all the other federations. Even a decision to abolish the Legislative Council requires an Act of the Union Parliament (Art. 169). Most of the other changes can only be effected by a constitutional amendment. The State Constitutions are no doubt expressed in considerable details occupying as many as 86 articles (Arts. 152-238). It follows therefore that excessive rigidity has thus been given to State governments. Even within these 86 articles all the principles of federalism are not covered, for the relations between the Union and the States are governed by Part XI, finance is regulated by Part XII, and Trade and Commerce by Part XIII. In the United States, the regulations of commerce with foreign States is a federal subject; the Federal Government administers this subject, implementing the laws passed by Congress in regard to this item, appointing officers and controlling them. But education is a state subject, and state governments in all the forty-eight states administer this subject in their respective states implementing the laws passed by the state legislatures in regard to the control of education and the appointment of officers.

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## CHAPTER 10

### THE STATE EXECUTIVE (Arts. 152-167, 177, 213,

### 217, 361 & Schedules 2 and 3)

#### The Governor (Arts. 153-162, 166, 213 and 361)

Just as the executive power of the Union is vested in the President, the executive power of the States in Part A which were called the "Governors' Provinces" before the commencement of this Constitution is vested in a Governor. The powers of the Governor of a State are analogous to those of the President, excepting that the Governor has no *diplomatic, military or emergency powers*. All executive actions of the Government of a State shall be expressed to be taken in the name of the Governor (Art. 166(1)). Orders and instruments made and executed in the name of the Governor shall be authenticated in a specified manner and the validity of an order or instrument so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor (Art. 166(2)).

*His appointment and Conditions of Office.* (Art. 155-159) He is appointed by the President by warrant under his hand and seal (Art. 155) and shall hold office during the pleasure of the President (Art. 161(1)). He shall hold office for a period of five years or until his successor enters upon his office. (Art. 156(3)).

In appointing a Governor for any State *our* Constitution departs from the federal principle underlying the American Constitution and follows the Canadian pattern. The President, no doubt, makes the appointment with the advice of the Union Cabinet and as it is observed, it may be expected that a convention would grow that the President would also consult the State Ministry before making such an appointment in that State.



Through this power of appointment and removal the President can secure greater control over the Governors of States. But this control of the President will not be as effective as the control of the Governor-General under Sec. 48(1) of the Act of 1935. This is because a large sphere of the provincial administration was taken out of the reach of ministerial advice, by requiring the Governor to act in the exercise of his individual judgment or in his discretion. The Governor was thus forced to act and to comply with such particular directions as may from time to time be given by the Governor-General in his discretion under Section 54(1) of the Act of 1935. Under *our* Constitution the Governor is *not* required to act in his individual judgment in any matter at all and he has to act only upon ministerial advice. It follows that the President shall not have any power of general superintendence over the State administration as was given under Sec. 54(1) of the Act of 1935.

His removal from office by the President is another departure from the strict federal principle as it obtains in the United States. Further, a person is not eligible for appointment as Governor unless he is a citizen of India and has completed the age of 35 years. He shall also not be a member of either House of Parliament or of a House of the Legislature of any State. If such a member is appointed as a Governor he shall be deemed to have vacated his seat in that House (Art. 158(1)). The Governor shall not hold any other office of profit (Art. 158(2)). He is entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law. (Art. 158(3)). Such emoluments and allowances as are once fixed shall not be diminished during his term of office to his disadvantage (Art. 158(4)).

Before entering upon his office he shall make and subscribe in the presence of the Chief Justice of the High Court or in his absence, the seniormost Judge of that Court available, an oath or affirmation in the form as prescribed under this constitution. (Art. 159). He may, by writing under his hand addressed to the President resign his office (Art. 156(2)).

**Powers of a Governor. (Arts. 154, 162-166, 174 & 213)**

As stated above the powers of a Governor of a State are analogous to those of the President except that he has no diplomatic, military or emergency powers. His powers may conveniently be divided into three distinct heads, namely, executive, legislative and judicial powers.

*Executive Powers.* He is the head of the executive power of the State in the sense that all power exercised by him either directly or through officers subordinate to him in accordance with the Constitution. (Art. 154(1)). All executive action of the Government of a State shall be expressed and taken in the name of the Governor (Art. 166(1)). Orders and other instruments made and executed in the name of the Governor shall be authenticated in a specified manner and the validity of an order or instrument so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor (Art. 166(2)). This article corresponds to Art. 77 of this Constitution. It should be noted that Art. 166(2) in no way ousts the jurisdiction of the Court to examine the validity of the order or instrument on any ground, particularly where there is a recital purporting to state as a fact the carrying out of a condition necessary for the valid making of the order. In such a case, the Court has power to enquire whether that condition precedent has in fact been carried out. Thus, an order of compulsory retirement of an officer which does not comply with the requirements of Art. 166 is not a nullity, if it is proved by extraneous evidence that the said order was made by a competent authority.

The Governor appoints Ministers and they hold office during his pleasure (Art. 164). This provision corresponds to Art. 75. There was also a similar provision under the Government of India Act, 1935, under Sec. 51(2).

The Governor has a right of opening address, of addressing and sending messages, summoning, proroguing and dissolving the legislature. These functions of the Governor are non-justiciable and the Governor's act cannot be challenged even on the ground of *mala fide* (Arts. 174-176).

He has power to cause the annual financial statement to be laid before the State Legislature (Art. 202(1)), and of making demands for grants and recommending Money Bills (Art. 207(1)).

He has the power of making Ordinances during recess of legislature (Art. 213), and a power of vetoing State Bills with power to reserve them for consideration of the President (Arts. 200-201). When a bill is presented before the Governor after its passage by the Houses of the Legislature, it will be open to the Governor to adopt *any one* of the following steps :

a) He may declare his assent to the Bill, in which case, it would be a law at once; or

b) He may declare that he withholds his assent to the Bill, in which case, the Bill cannot become a law; or

c) He may, in the case of a Bill, other than a Money Bill, return the same for reconsideration to the Houses with a message, but if the Bill is again passed by the Legislature with or without amendment, it would be obligatory upon the Governor to give his assent to the Bill, which will then become law; or

d) The Governor may reserve a Bill for the consideration of the President. In case where the law in question would derogate from the powers of the High Court under the Constitution, it is compulsory for the Governor to reserve such a Bill. If it is a Money Bill the President may either declare his assent or withhold the same. But in case of any other Bill, the President may, instead of declaring his assent or refusing, direct the Governor to return the Bill to the Legislature for reconsideration, in which case the Bill must be reconsidered within six months and if it is passed again, the Bill shall be presented to the President again. Even then it is not obligatory on the part of the President to give his assent to this Bill (Art. 201). This proves that the President can interfere considerably in the administration of the State.

In a strictly federal constitution like that of the United States, the States are autonomous within their sphere and there is hardly any scope for the Federal Executive to veto measures passed by the State Legislatures. Even in the Australian Cons-

titution there is no such provision for the reservation of a State Bill for the assent of the Governor-General who has no power to disallow State Legislation. Under Section 90(a) of the Canadian Constitution, however, the Governor-General has the power of refusing his assent to a Provincial legislation which has been reserved by the Governor for the signification of the Governor-General's assent. The Governor-General also possesses the power of directly disallowing a Provincial Act even though the same has not been reserved by the Governor for his assent. The Provincial Legislature is to this extent subordinate to the Dominion Executive. But under *our* Constitution, there is no direct disallowance of State Legislation by the Union President as is found under the Government of India Act, 1935. The President can always refuse his assent to a Bill and in that event the Bill can never become a law. It follows therefore that there is no way of overriding the veto of the President in case of State Legislation. Union's control over State Legislation is absolute under *our* Constitution and there are no grounds in the Constitution by which the President cannot refuse his assent to a bill passed by a State Legislature. It may be expected that the President will always use his power very sparingly when there is any apprehension of a clash with some Union legislation or Union policy.

The effect of reservation of such Bills is that a Bill which is so reserved for the consideration of the President shall have no legal effect until the President declares his assent to it. There is no time limit imposed by the Constitution upon the President either to declare his assent or that he withholds his assent. The President, therefore, can keep a Bill pending indefinitely without expressing his mind. Such a time limit is fixed under Secs. 57 and 90 of the British North America Act and Section 60 of the Australian Constitution. On the expiry of the period fixed, there is an automatic end of the Bill, unless it has received the necessary assent in the meantime. In our Constitution, the Bill will not lapse by mere efflux of time for the President can express his assent at any time.

With regard to the power of the Governor to make Ordinances during recess of State Legislature, the provisions of Art.

213 are similar to those of Art. 123 discussed above. The only difference is that the Governor *cannot* make ordinance without 'instructions' from the President, if a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for introduction thereof into the Legislature. The scope of the power of the Governor to make ordinances is co-extensive with the legislative powers of the State Legislature, and is confined to the subjects enumerated in Lists II and III of Schedule VII. If the ordinance has been made in pursuance of instructions of the President, as required under Art. 213(2), even if it is repugnant with a Union law, the Ordinance will prevail.

### Judicial Powers of a Governor

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matter to which the Executive power of the State extends (Art. 161).

Under Art. 72 the power to grant pardon has been conferred on the President. The pardoning power of the Governor is co-extensive with the Executive power of the State, as defined by Art. 162 which states that subject to the provision of this Constitution, the executive power of the State shall extend to the matters with respect to which the Legislature of the State has power to make laws; provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the Executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof. The effect of Art. 162 is that the executive authority of a State has jurisdiction in respect of subject enumerated in Lists II & III, except as otherwise provided in the Constitution, but it has no authority over the subjects enumerated in List I. It follows, therefore, that the pardoning power of the Governor shall extend to offences against laws relating to List II; and against laws relating to matters included in List III, subject to Union laws made in respect thereof, if any.

### Legislative Power of a Governor (Art. 213)

Under this, a Governor has the power to promulgate Ordinances in certain cases. Art. 213 is a reproduction of Art. 123 *mutatis mutandis*. This power of the Governor is not discretionary, and must be exercised with the aid and advice of the Ministers.

*When can an Ordinance be promulgated?* If at any time (except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session), the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require. (Art. 213(1)). Such Ordinances may be withdrawn at any time by the Governor (Art. 213(2)). But the Governor cannot promulgate any such Ordinance without instructions from the President if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for introduction thereof into the Legislature; or

(b) he (the Governor) would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would have been invalid unless having been reserved for the consideration of the President, it has received the assent of the President.

An Ordinance promulgated under Art. 213(2) shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor. Every such Ordinance shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses.

*When does the Ordinance cease to operate?* (Art. 213(2)). The Ordinance shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative

Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council.

If the Ordinance makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void (Art. 213(3)). This proviso gives validity to an Ordinance made by the Governor in respect to a matter in the Concurrent List, which is repugnant to a Union law, in the same manner as laid down in Art. 254(2), as regards an Act of the State Legislature, of the same nature. But under Art. 254(2) assent of the President is required after the Act is passed, while under Art. 213(3) the Ordinance is valid if it has been made by the Governor in pursuance of 'instructions' received from the President even though it is repugnant to a Union law. It is also clear from this proviso that where an Ordinance is promulgated in pursuance of instructions from the President, further reservation of the Ordinance for the assent of the President under Art. 254(2), would not be required.

### **Privileges of a Governor (Art. 361)**

1. Under this Article the President, or the Governor or Rajpramukh of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any acts done or purporting to be done by him in the exercise and performance of those powers and duties; provided that the conduct of the President may be brought under review by any court, or Tribunal, or body appointed or designated by either House of Parliament for the investigation of a charge under Art. 61; Provided further that nothing in this clause shall restrict the right of a person to bring appropriate proceedings against the Government of India or the Government of a State.

2. No criminal proceedings whatsoever shall be instituted or continued against the Governor of a State in any Court during his term of office.

3. No process for the arrest or imprisonment of the Governor of a State shall issue from any Court during his term of office.

4. No civil proceedings in which relief is claimed against

the Governor of a State shall be instituted during his term of office; in any court in respect of any act done, or purporting to be done, by him in his personal capacity, whether before or after he entered upon his office as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the Governor or left at his office stating; (i) the nature of the proceedings; (ii) the cause of action therefor; (iii) the name, description and place of residence of the party by whom such proceedings are instituted; and (iv) the relief which the party claims. .

In England, no action lies against the King *personally*, whether for his public or private acts under the maxim 'King can do no wrong'. However under the Crown Proceedings Act, 1947, action now lies against the Crown in his political capacity (i.e., against the State) for wrongs committed by servants of the Crown. This does not affect the personal immunity of the Crown from any action, civil or criminal.

In the United States the President is not subject to the control of the Courts in the exercise of his powers which are to be exercised by him in his individual judgment, according to the Constitution. The Courts have no right to compel a President to perform even the most constitutionally imperative act, nor can he be compelled to attend a Court during the term of his office. A *mandamus* is however available against the heads of the Departments or their subordinates. But no such writ lies when such officers are carrying out the act of execution of an Act of Congress, whether constitutional or unconstitutional. However, this immunity is on account of his office so long as he remains in that office. The President can be impeached and if he is removed from his office he can be tried in the ordinary courts for torts or crimes committed by him as President of the United States, for then he would no longer be a representative of the people or Government, but an ordinary citizen.

The position of the Governor of a State is not uniform on all points, though in many respects he has the same privileges as the President. He may not be subject to the process of the Courts nor will he be called upon to explain or defend his politi-



cal acts, but *mandamus* may lie for the performance of merely ministerial acts. Further, a court can declare an act of the Government as null and void if it is *ultra vires* of the Constitution and *quo warranto* is also available against the Governor.

Under Sec. 306(1) of the Government of India Act, 1935, no process whatsoever would lie in any court in India against the Governor-General or against the Governor of a Province or against the Secretary of the State, whether in a personal capacity or otherwise, and no proceedings whatsoever shall lie against these dignitaries except with the sanction of his Majesty-in-Council.

### **The Governor and his Council of Ministers** **(Arts 163, 164 & Schedule III)**

The relation between the Governor and his Ministers is the same as those of the President and his Ministers as laid down under Art. 74. But the difference is that our Constitution does not empower the President to exercise any function 'in his discretion', as it authorises the Governor under Art. 201. In the discharge of this function the Governor is not required to act according to the advice of his Ministers or even to seek such advice.

"In relation to the Ministry, the Governor has a two-fold duty, namely, one is that he has to retain the Ministry in office because the Ministry is to hold office during his pleasure and the second is to advise the Ministry and to suggest an alternative method of dealing with a problem and ask them for reconsideration of decisions." (Dr. Ambedkar, Constituent Assembly Debates). It follows that the role of a Governor is not exactly that of a passive agent for it is his duty to give his Ministers all relevant information which comes to him and may even suggest an alternative policy if he thinks fit. While the Governor may have no functions to discharge by *himself*, and has no power to override the Ministry in any popular matter, it is his duty to advise the Ministry and his advice and instruction would always be received with utmost respect.

*Our Constitution provides that to aid and advise the Govern*

nor, there shall be a Council of Ministers with the Chief Minister at its head. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State (Art. 162(2)). Any advice tendered by any Minister to the Governor shall not be inquired into in any Court (Art. 163(3)). Further, if any question arises whether any matter is or is not a matter in which the Governor is to act in his discretion the decision of the Governor shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion (Art. 163(2)).

These two Articles, namely 163 and 164(2) lay down in general term the principle of *Ministerial responsibility*. It means that the Governor in his executive capacity should act on the advice of his Ministers. Art. 163(2) is intended to emphasise the fact that the Governor may act in his discretion in specific cases laid down in the Constitution. It follows that wherever the Governor is empowered to act *in his discretion* (Arts. 200 & 201), he has always to act under the advice of his Ministers. Art. 163 therefore should be read with Arts. 200 and 201 wherein the Governor can act in his discretion. Art. 163 however does not give the Governor a power to disregard the aid and advice of his ministers in any matter in which he finds he ought to disregard. The question is whether the Governor is always bound to take the advice of his Ministry? Is he merely a rubber stamp' in the hands of his Ministry or has he some real power? Our Constitution is silent on this point. Normally, every Governor is expected to act constitutionally as the constitutional head of a State and to carry out the advice of his Ministers. Art. 164 (2) clearly lays down ministerial responsibility, that is, the Council of Ministers are collectively responsible to the Assembly, that is, the Ministry is enjoying the confidence of the people. Under our Constitution, the power to act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his Ministers.

*Appointment of Ministers* (Art. 164). The Chief Minister is appointed by the Governor and the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Ministers hold office during the pleasure of the Governor;

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in-charge of the welfare of the Scheduled Castes and Backward Classes or any other work.

*Duty of the Chief Minister* (Art. 167). It shall be the duty of the Chief Minister to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of State and proposals for legislation and also to furnish such information as the Governor may require in this connection. If the Governor so requires, any matter, on which a decision has been taken by a Minister but which has not been considered by the Council, may be submitted for the consideration of the Council of Ministers. Art. 167 corresponds to Art. 78. Although the Governor is a constitutional head and is not expected to interfere with day-to-day proceedings of the Council of Ministers, it is his duty to see that impartiality and purity in the administration is secured.

*Rights of a Minister* (Art. 177). Every Minister shall have a right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly of the State (or in the case of a State having a Legislative Council, in both Houses), but he shall not be entitled to vote. Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to Forms V and VI as given in Schedule III. Art. 177 corresponds to Art. 88 of our Constitution.

In other civilised countries these rights have been granted to Ministers. In England a Minister who is not a Member of Parliament for the time being has no right to speak in either House. In the Constitutions of Eire, South Africa and the French Republic, Ministers have access to the Chambers and to their Committees. This is a departure from the English tradition. In India also every Minister who is not a member of that House is allowed to address either House of Parliament or any of its Committees or at a joint sitting of those Houses. Under Art 75(5) a person may remain a Minister for a period of six months although he is not a member of either House of Parliament. If after this period he is not elected, he ceases to be a Minister.

**The Advocate-General for the State  
(Arts. 165, 177 & 217)**

The Governor of each State shall appoint a person who is qualified to be appointed a Judge of the High Court to be Advocate-General for the State. He holds office during the pleasure of the Governor, and receives such remuneration as the Governor may determine. The legality of the appointment of an Advocate-General may be challenged by an application for *quo-warranto*. The Nagpur High Court in *Karkare v. Shevde*, 1952, 7 D.L.R. 106, has held that an Advocate-General can continue in office beyond 60 years of age, although it is necessary for a High Court Judge to retire at that age. Art. 165(3) lays down the duration of the office of the Advocate-General and hence there is nothing to prevent a Governor from appointing or not appointing a person who is above 60 years of age. Even a person who is a retired High Court Judge before the commencement of the Constitution may be appointed Advocate-General because the bar under Art. 220 does not apply to him. Art. 220 lays down that no person who has held office as a Judge of a High Court *after* the commencement of this Constitution shall plead or act in any Court or before any authority within the territory of India. This bar would not apply to a Judge who retired prior to the commencement of this Constitution and is called to act as an *ad hoc* Judge under Art. 224.

**His Duties :** (Art. 165(2)). It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for time being in force. It follows, therefore, that by reason of his office, the Advocate-General is debarred from advising or holding briefs against the State, defending accused persons in criminal prosecution, advising private parties in cases in which he is likely to be called on to advise Government, accepting appointment as Director in any company without sanction of the Government. As the salary of the Advocate-General is not charged upon the Consolidated Fund of the State, it will be subject to the vote of

the Assembly. The Advocate-General will not thus be independent of the Government of the day as he was under Sec. 55(4) of the Act of 1935.

Under Art. 177 he has a right to speak and take part in the proceedings of the Legislative Assembly or the Legislative Council but is not entitled to vote therein.

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## CHAPTER 11

### THE STATE LEGISLATURE

(Arts. 168-212 & 333, 334)

Our constitution provides that for every State there shall be a Legislature which shall consist of the Governor; and

(a) In the States of Andhra, Bihar, Bombay, Madras, Punjab, U.P., and West Bengal, two Houses—one known as the Legislative Council and the other as the Legislative Assembly.

(b) In other States, one House known as the Legislative Assembly.

Art. 169 lays down that though the Constitution itself provides a second Chamber in six States, leaving others to be unicameral, it makes it possible either to abolish the Second Chamber in any of the six States or even to create a second chamber in any of the four remaining States without the necessity of going through the process of constitutional amendment. This change can be effected by a resolution passed by a special majority of the Lower House of the State Legislature itself as provided in Art. 169(1). After this Parliament by a law in the ordinary course of legislation makes consequential changes as may be necessary.

#### Composition of the Legislative Assemblies

(Arts. 170, 172, 333 and 334)

The Legislative Assembly of each State shall be composed of members chosen by direct election and the representation of each territorial constituency in the Legislative Assembly of a State shall be on a scale of not more than one member for every 75,000 of the population, making a total number of members in the Legislative Assembly of a State to not more than 500 and not less than 60 (Art. 170). But the Governor or Rajpramukh of a State may, if he is of the opinion that the Anglo-Indian commu-

nity needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such members as he considers appropriate (Art. 133). But it is laid down in the Constitution that the reservation of seats of the Anglo-Indian Community in the House of the People and in the Legislative Assemblies of the States shall cease to have effect after 10 years from the commencement of this Constitution.

Every Legislative Assembly of every State unless sooner dissolved shall continue for five years and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. But the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament for one year at a time and not extending in any case beyond six months after the Proclamation has ceased to operate (Art. 172).

*Qualification for membership of a State Legislature.* A person shall *not* be qualified to be chosen to fill a seat in the Legislature of a State unless he :—

- (a) is a citizen of India,
- (b) is in the case of a seat in the Legislative Assembly, not less than 25 years of age; and in the case of a seat in the Legislative Council, not less than 30 years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament (Art. 173).

The provisions of this article are exactly similar to those of Art. 84.

*Disqualification of Members.* A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State—

- (a) if he holds any office of profit, other than that of a Minister, under the Government of India or the Government of any State specified in the First Schedule; or
- (b) if he is of unsound mind and stands so declared by a competent court; or
- (c) if he is an undischarged insolvent; or
- (d) if he is not a citizen of India or has voluntarily acquir-

ed the citizenship of a foreign State or is under any acknowledgment of allegiance or adherence to a foreign State; or

(e) if he is so disqualified by or under any law made by Parliament (Art. 191).

If any question arises as to whether a member of the House of Legislature of a State has become subject to any disqualification mentioned under Art. 191, the question shall be referred to, for the decision of the Governor whose decision after obtaining the opinion of the Election Commission thereon, shall be final (Art. 192(2)).

*Effect of disqualification* (Art. 190). On his becoming subject to any of these disqualifications his seat shall thereafter become vacant. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of the State before he has complied with the requirements of Art. 188 (oath or affirmation by member before taking his seat), or when he knows that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of Rs. 500 to be recovered as a debt due to the State (Art. 193).

*Disabilities of Members* (Art. 190). (1) No person shall be a member of both Houses of Legislature of the State nor shall he be a member of the Legislatures of two or more States specified in First Schedule (Art. 190(2)).

(2) If for a period of 60 days a member remains absent from all meetings of the House of the Legislature of a State without the previous permission of the House, the House may declare his seat vacant (Art. 190(4)); Provided that in computing the said period of 60 days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

### **Powers, Privileges and Immunities of State Legislatures and Their Members (Art. 194).**

Every member of the State Legislature has freedom of speech in that House. No member of the Legislature of a State shall



be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature, or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such Legislature of any report, paper, votes or proceedings. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined shall be those of the House of Commons of the United Kingdom, and of its members and Committees, at the commencement of this Constitution.

*Salaries and allowances of Members* (Art. 195). Members of the Legislative Assembly and Legislative Council of a State shall be entitled to receive such salary and allowance as may from time to time be determined by the Legislature of the State by law and until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province. This article corresponds to Art. 106.

### **Officers of the State Legislature (Arts. 178-181)**

Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof. A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly or may at any time by writing under his hand address, if such a member is a Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office. They may be removed from their office by a resolution, moved after 14 days, notice passed by a majority of all the then members of the Assembly, provided that no resolution for this purpose can be moved unless the requisite notice of 14 days has been given of the intention to move such a resolution. Further, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the meeting of the Assembly after the disso-

lution. While the office of the Speaker is vacant, the duties of his office shall be performed by the Deputy Speaker, or if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for this purpose. The Speaker or the Deputy Speaker shall not preside while a resolution for removal from office of either of them is under the consideration, but they shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for their removal from their office is under consideration, but notwithstanding anything in Art. 189 be entitled to vote in the first instance but not in the case of equality of votes (Art. 181(2)).

## THE LEGISLATIVE COUNCIL

(Arts. 171-173 & 182-185)

The Legislative Council is a permanent body not subject to dissolution because one-third of its members retire every second year. The size of the Legislative Council varies with that of the Legislative Assembly but in no case it should be more than one-fourth of the membership of the Legislative Assembly but not less than forty. This provision has been adopted so that the Upper House may not get predominance in the Legislature. The system of composition of the Council as laid down in the Constitution is not final. The power conferred upon Parliament in this respect, by Cl. 2 of Art. 171 is unfettered, so that Parliament, if it is so disposed, may do away with the principle of special representation embodied in Cl. 3, and adopt any other principle.

*Its Composition and Duration.* (Arts. 171-172). As stated above, the total number of members should not exceed 25% of the total number of members in the Legislative Assembly, but in no case the number shall be less than forty. Out of these,—

(a) one-third shall be elected by electorates consisting of members of Municipalities, District Boards, and other Local Authorities as specified by the Parliament,

(b) one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the Territory of India,

(c) one-twelfth shall be elected by the Teachers of at least three years standing in educational institutions not lower than a Secondary School,

(d) one-third shall be elected by the Members of the Legislative Assembly of the States,

(e) the remainder shall be nominated by the Governor. These shall consist of persons having special knowledge or practical experience in literature, science, art, co-operative movement and social service (Art. 171(5)).

*Officers of the Legislative Council.* (Arts. 182-185). Every Legislative Council has a Chairman and Deputy Chairman. They are selected by the members of the Council and who shall vacate their office if they cease to be members of the Council. They may by writing resign the office they are holding. They can also be removed from the office by a resolution of the Council passed after 14 days' prior notice is given by a majority of all the then members of the Council. They shall not preside while a resolution for their removal from the office is under consideration. But they have a right to speak and otherwise to take part in the proceedings of the resolution for their removal from office which is under the consideration of the Council, but shall be entitled to vote only in the first instance but not in the case of an equality of votes.

*Qualifications* (Art. 173). A person to be a member of a Legislative Council shall be a citizen of India, thirty years of age, and possesses any qualification laid down by Parliament. Every member before taking his seat, shall make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation in the Form VII of Schedule III of the Constitution (Art. 188). If any person who has not complied with the requirements of Art. 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by any law — he shall be liable in respect of each day on which he so sits or votes, to a penalty of Rs. 500 to be recovered as a debt due to the State (Art. 193). A member of the Legislative Council of a State is disqualified from holding any office of profit, other than that of a Minister, under the Government of India or the Government of

any State; or if he is of unsound mind and stands so declared by a competent court; or if he is an undischarged insolvent; or if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance to a foreign State or if he is so disqualified under any law made by Parliament. On his being so disqualified, his seat in the House shall be declared as vacant, and he shall have no right to occupy the same. Under Art. 190 no person can be a member of both Houses of the Legislature of a State, nor shall he be a member of the Legislatures of two or more States specified in the First Schedule or if he remains absent from all meetings of the House for a period of 60 days without the permission of the House, his seat may be declared as vacant by the House. Like the members of the Legislative Assembly, the members of the Council of State under Art. 194, have freedom of speech and are not liable to any proceedings in any Court in respect of anything said or any vote given by them in the Legislature, or the Committee thereof, and no person would be liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings (Art. 194).

### **Procedure in the State Legislature** **(Arts. 174, 176, 189, 196-212)**

The procedure in the State Legislature is almost similar to the procedure of the Union Parliament as outlined under Art. 107.

The House or the Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their first and last sitting. The Governor may summon the House or either House to meet at such time and place as he thinks fit, prorogue the House or the Houses; or even dissolve the Legislative Assembly. The Governor may address both the Houses together and may, for that purpose, require the attendance of the members. He may even send messages and instructions to the House or Houses of the Legislature of the State whether with respect to a Bill pending in the Legislature or even otherwise.

All questions at any sitting of a House of the Legislature of a State are determined by a majority of votes of the members present and voting other than the Speaker or Chairman as the case may be, who shall not vote in the first instance, but can exercise the right of a casting vote in case of an equality of votes. The quorum of a House of the Legislature of a State is fixed at 10 members or one-tenth of the total number of the House whichever is greater. If at any time during a meeting of the Legislative Assembly or the Council, the Speaker finds that there is no quorum then he shall either adjourn the House or suspend the meeting until there is a quorum.

### **Legislative Procedure (Arts. 196-201)**

Under Arts. 196 and 197 our Constitution lays down the law as to the passing of Bills. A Bill may originate in either House of the Legislature of a State which has a Legislative Council and it shall not be deemed to have been passed unless it has been agreed to by both Houses.

If after a Bill (other than a Money Bill) has been passed by the Legislative Assembly of the State having Legislative Council and transmitted to the Legislative Council and if the Bill is rejected by the Council; or the Bill is not passed for a period of three months from the date on which the Bill was sent to the Council; or if the Bill was passed by the Council with amendments to which the Legislative Assembly would not agree, the Legislative Assembly may then pass the Bill again in the same or in any subsequent session with or without such amendments and the Bill is then transmitted to the Legislative Council and if after this the Bill is either rejected by the Council or is not passed within one month after the presentation of such a Bill or is passed with amendments to which the Legislative Council does not agree, the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly (Art. 197).

Under Art. 108 whenever there is a difference of opinion

between the two Houses of the Union Parliament with regard to a Bill, such differences are to be resolved at a *joint sitting* of the two Houses. But under Art. 197 there is no such provision for solving deadlocks between the two Houses of the State Legislature. By convention the will of the Lower House shall ultimately prevail and the Council has no more power than to interpose some delay in the passage of the Bill to which it disagrees. This provision for joint sitting under Art. 108 is borrowed from the Government of India Act, 1935, and the Constitution of Australia, where joint sitting is the ultimate remedy, as laid down under Art. 57 of the Australian Constitution.

*When do Bills lapse and when not?* A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof, nor shall a Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly, lapse on a dissolution of the Assembly. But a Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly (Art. 196). This article corresponds to the Art. 107 discussed above with regard to lapsing of Bills in the Union Parliament.

### Money Bills (Art. 199)

The provisions with regard to Money Bills in the State Legislature are *almost the same* as discussed above with regard to Money Bills in Parliament under Arts. 109 and 110.

*Special Procedure in respect of Money Bills* (Arts. 198, 199 & 207). These Articles exactly correspond to Art. 109 discussed above.

*Procedure in Financial Matters* (Arts. 202-207). These Articles exactly correspond to Arts. 112 to 117 discussed above.

*Votes on Account, Votes of Credit and Exceptional Grants* (Art. 206). This Article exactly corresponds to Art. 116 discussed above.

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## CHAPTER 12

### THE HIGH COURTS IN THE STATES

(Arts. 124, 214-230, 235, Schedule III & Form VIII)

We have already discussed above the position of the State Legislatures in our Constitution as also the organisation of the High Courts. These powers have been severely restricted by various provisions contained in the Constitution. The theory of the separation of powers has been incorporated in *our* Constitution by making the judiciary independent of the executive and the legislature. Judges are no doubt appointed by the President; they are removable by the President only on addresses by both Houses of Parliament. It follows therefore that the appointment as well as the removal have been taken out of the hands of the State authorities and vested in the Centre. This is clear by Art. 217 of our Constitution. Minimum salaries have also been fixed with the further provision that neither the salary of a Judge nor his rights in respect of leave or pension shall be varied to his disadvantage after his appointment (Art. 221). Under Art. 227 every High Court has the unqualified superintendence over all Courts throughout its territorial jurisdiction. Under this power of superintendence every High Court can exercise a power of revision in cases where no revision lies under Sec. 115 of the Civil Procedure Code. The Constitution thus restores to the High Court the power it had under the Government of India Act, 1915. It is now settled that Art. 227 includes the power of judicial superintendence. The Constitution thus assures security of tenure, security of remuneration, security of revisional jurisdiction in the form of superintendence. The object of our Constitution is, therefore, to secure judicial independence within the framework of a Federation.

Art. 214 states that there shall be a High Court for each State. The High Court has been defined under Art. 366(14) as

any Court which is deemed for the purpose of this Constitution to be a High Court for any State and include—

(a) any Court in the territory of India constituted or re-constituted under this Constitution as a High Court, and

(b) any other Court in the territory of India which may be declared by the Parliament to be a High Court for all or any of the purposes of this Constitution. In 1948, two new High Courts were created for Orissa and Assam.

It follows that Art. 214 refers to the ten States in Part 'A'. Under Art. 238(12), each of the seven States in Part 'B' have a High Court. As regards States in Part 'C' by Art. 241 it is provided that Parliament may by law constitute a High Court for a State specified in Part 'C' of the First Schedule or declare any Court in any such State to be a High Court for all or any of the purposes of this Constitution.

By Art. 215 every High Court is a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. This Article corresponds to Art. 129.

According to Art. 216 every High Court consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Under Art. 223 when the office of the Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duty of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose. Art. 223, therefore, envisages the appointment of an Acting Chief Justice for the High Court.

*Appointment and Conditions of the Office of a Judge of a High Court* (Art. 217). Every High Court Judge is appointed by the President by warrant under his hand and seal after consulting the Chief Justice of India, the Governor of the State and in case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court, and he shall hold office until he attains the age of 60 years. He may by writing under his hand addressed to the President resign his office or he may be removed from his office by the President in the manner provided in



Cl. 4 of Art. 124 for removal of the Judge of the Supreme Court. A High Court Judge is liable to be transferred to any other High Court or to the Supreme Court within the territory of India. For being qualified for the appointment of a Judge of a High Court a person must be a citizen of India and has at least held a judicial office in the territory of India for a period of ten years or has been an advocate of a High Court in any State for at least ten years or two or more such Courts in succession.

Every High Court Judge before he enters upon his office shall make and subscribe before the Governor of State an oath or affirmation in Form VIII as given in Schedule III. He gets a salary of Rs. 3,500 per month, the Chief Justice getting Rs. 4,000 per month. The allowances and pensions once fixed at the time of appointment cannot be varied to his disadvantage (Art. 221). After his retirement a High Court Judge cannot plead or act in any Court or before any authority in India (Art. 220).

### **Powers of a High Court (Arts. 226-228, 230 & 235)**

Under Art. 226 every High Court has the power of issuing directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them for the enforcement of fundamental rights conferred under Part III of the Constitution. This power is analogous to the power of the Supreme Court under Art. 32. A High Court can issue writs only after a decision that the aggrieved party has a fundamental right which has been infringed; and only after a finding that the aggrieved party has a legal right which entitles him to any of the above mentioned writs and that his fundamental right has been infringed to interim relief can be granted without finally determining the rights of the party in question in the proceeding.

With regard to fundamental rights it is not only a power but a duty on the High Courts to issue the prerogative writs. But in the matter of ordinary right or 'other purposes' the remedy is an extraordinary and discretionary remedy and the High Courts have always a right to refuse a writ if they are satisfied that the aggrieved party can have adequate or suitable relief elsewhere.

*Comparing Articles 32 and 226*, we can clearly see that Article 32 guarantees the right to move the Supreme Court for the enforcement of fundamental rights, and this right is in itself a fundamental right. While Art. 226 only confers on the High Court the power to enforce the fundamental rights by appropriate writs. A person can, therefore, move the High Court only when he has no other equally adequate, convenient and expeditious remedy available. But in case of violation of a fundamental right it has been held by the Supreme Court that if the Supreme Court cannot refuse to interfere under Art. 32 *ipso facto* the High Court must also grant relief under Art. 226.

With the introduction of Art. 226, section 45 of the Specific Relief Act has become redundant in as much as under Art 226 all the High Courts are empowered to issue the writ of *mandamus*. It follows, therefore, that Art. 226 is wider in scope than Sec. 45 of the Specific Relief Act. Further, Art. 226 is retrospective in operation in as much as it deals with the fundamental rights. But as regards rights other than fundamental rights it has been held in some cases that where there has been an assertion of a claim after commencement of the Constitution, the High Court is entitled to give relief under Art. 226, though the right accrued prior to the Constitution. But this principle cannot apply where the right exists under the ordinary law.

Art. 226 confers unfettered power on the High Courts to issue the prerogative writs but all the High Courts agree that this does not mean that this power should be used as an ordinary remedy to substitute the action that lie under the general law of the land, and that the High Courts should impose certain self-imposed limitations upon the exercise of this extraordinary power. According to Basu, "the above considerations should not be set up as a rule of thumb so that the extraordinary remedy may lose its efficacy as a constitutional remedy for the maintenance of the freedom. It is submitted that in applying the above limitation, the Court should make a three-fold distinction—(a) between cases where the writ is applied for the enforcement of fundamental rights and cases where it is sought for other purposes, (b) between ordinary cases and cases of flagrant injustice where extraordinary action is called for from the Court; the me-

rits of each case be judged upon its circumstances instead of applying an inflexible bar on account of the existence of 'alternative remedy', (c) between the different writs,—all of which are not on the same footing in this respect—e.g., between prohibition and *mandamus*." (Commentary on the Constitution of India, Vol. II.)

*Can Relief under Art. 226 be barred by Statute?* The relief under Art. 226 can only be taken away or curtailed by legislation short of Constitutional amendment. Under Art. 32(1) relief is specifically guaranteed by the Constitution, which is the paramount law of the land, and any law which is inconsistent with it, must be regarded as void. Existing laws which seek to fetter this constitutional jurisdiction of the High Court are declared as void to the extent of such inconsistency. The jurisdiction of the High Court cannot be taken away even indirectly.

*Relief to be asked for in an application under Art. 226.* In *Chitranjit Lal v. Union of India*, (S.C.A. 869 : 1950-51), Mukherjee J. has observed—"Article 32 of the Constitution gives us a very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the Petitioner cannot be thrown out simply on the ground that proper writ or directions has not been prayed for. From this it follows that the High Court should not dismiss an application on the mere technical ground that proper writ has not been asked for, where there is ground for intervention of the Court, particularly in cases where there has been an infringement of a fundamental right. A Calcutta Division Bench has held that although it is desirable that the prayers in an application under Art. 226 should be as specific and definite as they can be, the Court is not powerless to afford necessary relief in proper cases. It follows, therefore, that the High Court has power of issuing writs for the purposes of granting *any kind of relief*."

*When does an appeal lie from Art. 226?* Appeal lies to the Supreme Court from a decision of the High Court on a certificate from that Court under Art. 132 (1)(c) where there is a question involving interpretation of the Constitution or under Art. 133 (1)(c) where no constitutional question is involved. If the certificate is refused, the applicant may then appeal by *special leave*

of the Supreme Court itself under Art. 136. No appeal lies to the Supreme Court from a decision of a single Judge in a proceeding under Art. 226. The appeal can only lie from the Judgement of a Division Bench or a Full Bench.

*Whether Second Application lies?* There is nothing in the Constitution to bar a second application under Art. 226 where a previous one has been dismissed, at least where the previous one was rejected on a preliminary ground. But grounds available in the previous application cannot be repeated in the subsequent application.

*Subordinate Courts* (Arts. 233-236). The Governor of the State in consultation with the High Courts makes the appointment of District Judges, that is, a Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge in a particular State. With regard to appointments of persons other than District Judges to the Judicial Service of a State, they shall be made by the Governor of the State after consulting the State Public Service Commission and the High Court. For the purposes of such an appointment a candidate must have a seven years' standing as an advocate and is recommended by the High Court for appointment (Art. 233(2)).

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## CHAPTER 13

### RELATIONS BETWEEN THE UNION AND STATES

(Arts. 245-263, 369 and Sch. 7)

Another Chapter in the Indian Constitution which is a direct legacy of the Government of India Act is a Chapter on the relations between the Union and the States. These articles provided in the Constitution bring about co-ordination and co-operation amongst different States, but it is the ultimate authority of the Union Government that tries to co-ordinate the activities of the States by giving them directions and also making certain provisions for the distribution of revenues. Many of the provisions here are anti-federal and are inserted to meet the special needs of India. For the purpose of ironing out differences between the States, provisions for commissions and conferences are included in the constitution. The Centre recognises the autonomy of the Units and establishes an effective nexus between the Centre and the States. It also secures uniformity and co-ordination in matters of common interests. Judged by the accepted theory of federalism, they are as stated above, anti-federal in nature, and have their origin in the setting of the Act of 1935. Their presence is therefore fully justified and appreciated.

The relations between the Union and the States as described in our Constitution can conveniently be divided into two categories :— (I) *Legislative* Relations dealt with under Arts. 245 to 255 and (II) *Administrative* Relations dealt with under Arts. 256 to 263.

#### I. Legislative Relations (Arts. 245-255, 369 & Sch. 7)

Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. No law made by Parliament shall be deemed to be invalid on the ground that it

would have extra-territorial operation. (Art. 245). It follows that Art. 245 tries to define the territorial limit of the powers of Legislation vested in the Parliament and the Legislatures of the States. Like the British Parliament the powers of the India Parliament are subject to no limitation whatever. In the Seventh Schedule there are 97 matters enumerated over which the Union Parliament can exclusively legislate. These matters are enumerated in the *Union List*. The Union List is the dominant List and any law made with regard to any matter in the Union List will prevail over any law made with regard to any matter in the State List.

**Some of the items included in Union List are :—**

1. Defence of India and every part thereof including preparation for defence and all such Acts as may be conducive in times of war to its prosecution, and after its determination to effective demobilisation.

2. Naval, military, air-forces, any other armed forces of the Union, together with the different works.

3. Arms, fire-arms, ammunition and explosives including atomic energy and resources necessary for its production.

4. Foreign Affairs : all matters which bring the Union into relation with any foreign country. This includes diplomatic, consular and trade representations from other countries.

5. The United Nations Organisation.

6. War and Peace including foreign jurisdiction.

Since Parliament has the exclusive power to legislate with respect to matters enumerated in the Union List, a State Legislature cannot legislate with respect to any such matter, even indirectly, e.g., by adopting a law passed by the Parliament. It is true that in view of the large number of items in the different Lists, it is almost impossible to prevent a certain amount of overlapping. It is not possible to lay down absolutely sharp and distinct lines of demarcation.

**Concurrent List (Art. 246(2) & Sch. 7)**

The object of having a Concurrent List of subjects, over which the Centre and the federating Units have concurrent po-

wers, is to establish *uniformity*. The plan of three Lists in the Constitution was adopted from the Government of India Act, 1935. In copying these three Lists the Joint Parliamentary Committee maintained, "it would in our view be disastrous if the uniformity of the law which the Indian Codes provide were destroyed or whittled away by the uncoordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from province to province and Provincial Legislatures ought to have the power of adopting the general legislation of this kind to meet the particular circumstances of a Province."

It has been maintained by many writers that the existence of a *concurrent* jurisdiction in some matters is not necessarily incompatible with the federal principle. If there is a concurrent jurisdiction, there will always be some provision to determine the authority which will always prevail in case of conflict. From the point of view of the federal principle it does not matter in which authority this overriding power on subjects of concurrent jurisdiction is vested. But it is essential that in a federation there must be some matter or matters which come under the exclusive control, actual or potential of the Central Government and some other matters under the Regional Governments. As a matter of fact concurrent jurisdiction is found in all modern federal governments. The extent of concurrent jurisdiction varies considerably for in Canada it is small, while in the United States and Australia, the concurrent jurisdiction is extensive and contains subjects such as the armed forces, and charges upon imports and exports. But the regions may legislate in respect of these subjects with the consent of the general government. In all other matters in the concurrent field the regions may legislate without asking the consent of the general government. Thus in the United States and Australia and general and Regional Governments can both legislate in respect of matters concerning inter-State and foreign commerce, and in respect of bankruptcy, copy-rights and patents, census and statistics, weights and measures—all these subjects are removed entirely from regional control, and given to the exclusive jurisdiction of the Dominion Government under the Canadian Constitution.

In Switzerland the concurrent field is smaller than in the

United States and Australia, but it is wider than in Canada. It includes immigration, which is under concurrent jurisdiction in Canada, the United States and Australia. Subjects like banking are in the concurrent list in Switzerland, the United States and Australia, but in Canada they come under the jurisdiction of the Dominion Government. Agriculture is in the concurrent list in Canada, while in the United States and Australia it is the exclusive jurisdiction of the State governments, but in Switzerland the same is divided between the general and the regional governments.

Our Constitution contains three legislative lists which has evoked great interest because the first list enumerates under 97 heads, the subjects over which the Union Legislature has exclusive control; the second, under 65 heads, those under the exclusive control of the States; and the third, under 45 heads, the subjects upon which both Union and States Legislatures have concurrent jurisdiction. The enumeration in the three lists is more complete than anything attempted in the four Federations (United States, Australia, Switzerland and Canada). The matters in the concurrent list are, on the whole, not unexpected, but a subject like immigration which appears in the concurrent list in all four Federations, is under the exclusive jurisdiction of the Union government. The provisions regarding the conflict between the Centre and the States laws on concurrent subjects are interesting because there is an effort to secure uniformity and co-ordination in matters of common interest. For this purpose sufficient flexibility in the exercise of the concurrent jurisdiction has been introduced so that the President of India may even give his consent to a State law on a concurrent subject to prevail in spite of its repugnancy. It follows, therefore, that in case of conflict the Union government is *not* always supreme.

Prof. Wheare thinks that although concurrent jurisdiction is not incompatible with federal government, it may not be incompatible with a good federal government, because it adds another series of disputes about jurisdiction to the already formidable list of possible conflicts which are inevitable in even the simplest federal system. Difficulties regarding interpretation would become more varied and it would be almost impossible



to draw up three lists in such a manner so that there could be no chance of overlapping between the different matters dealt with under different lists. It is better therefore to have one list only and that actually exclusive list. But in actual practice it is not possible to organise a federal government on one list only with an exclusive jurisdiction. It follows, therefore, that in the light of experiences of other federations it is better always, if possible, to admit concurrent jurisdiction if only as a transitional measure. It is best to have a short exclusive list and a rather longer concurrent list.

It is clear from the above discussions that both the Union Parliament and the State Legislatures have within their constitutional limits, *plenary powers* of legislation like any other sovereign Legislature. It follows that either legislature may have power to legislate absolutely or conditionally. It may even delegate its authority to subordinate bodies to make bye-laws or regulations under the statute, for its detailed administration. It may also happen that the Legislature may legislate with respect to a part of the subject for which it has power to legislate under the Constitution. It may also validate unlawful act if it is within its legislative competence but it cannot ratify an *ultra vires* enactment of its own, by passing a validating Act.

The matters enumerated in the '*Concurrent List*' are 47 in number. They are of varied nature and it would be best to enumerate only a few of them as found in Schedule VII.

Parliament and Legislature of any State specified in Part A or Part B of the First Schedule also, have power to make laws with respect to any of the matters enumerated in the Concurrent list. These matters are :—

1. Criminal law, including all matters under the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in the Union List or the State List and excluding the use of Naval, Military or Air Forces or any other Armed Forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community; persons subjected to such detention.

4. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

5. Transfer of property other than agricultural land; registration of deeds and documents.

6. Contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land.

7. Trade Unions; industrial and labour disputes; social security and social insurance, employment and unemployment.

In the above and many more matters as enumerated in List III the Parliament and State Legislatures have power to legislate.

### State List (Art. 246(3) and Schedule 7)

The Legislature of any State specified in Part A or Part B of the First Schedule has *exclusive* power to make laws for such States, or any part thereof, with respect to any of the matters enumerated in the State List, that is, List II in the Seventh Schedule. There are 66 matters enumerated in this List. The following are some of the important matters on which the State *alone* can legislate :—

1. Public order (but not including the use of naval, military, air forces, or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Public health and sanitation; hospitals and dispensaries.

4. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

5. Education including universities, subject to the provi-

sions of entries, 63, 64, 65 and 66 of List I and Entry 25 of List III.

6. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

7. Forests, protection of wild animals and birds, fisheries, markets.

8. Money lending and money lenders; relief of agricultural indebtedness.

9. Estate duty in respect of agricultural land; taxes on lands and buildings.

The above are some of the important matters and many more on which a State *alone* has power to make laws with respect to them. However, under Art. 369 Parliament is empowered to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List. This Article has been included in the Constitution for better control of the production, supply and distribution of certain articles during a transitional period of five years, during which Parliament was given concurrent power of legislation as regards the matters specified in Cls. (a) and (b) relating to this Article. In exercise of these powers the Parliament made the *Essential Supplies (Temporary Powers) Amendment Act* (LII of 1950) and the *Supply of Prices and Goods Act* (LXXII of 1950). The period of five years having expired the present Article has ceased to be in force. Instead, concurrent legislative power has been conferred on Parliament on a permanent footing, by amending Entry 33 of List III. The Amendment to entry 33 was substituted by the Constitution (Third Amendment) Act, 1955, which came into force on 22-2-55.

### **Power of the Parliament to Legislate with respect to Matters in State List or Concurrent List (Arts. 248-253)**

*Residuary Powers of Legislation.* (Art. 248). Parliament has *exclusive* power to make any law with respect to any matter not enumerated in the concurrent or State list. It follows that all residuary powers of Legislation remain only with Parliament. Such power also includes the power of making any law imposing a tax not mentioned in either of those Lists.

The problem of residuary powers has been dealt with in different ways in the Federal Constitutions of the World. Under the American Constitution we saw that the Centre has only enumerated powers while the residue is vested in the States. But judicial interpretation reversed this federal plan and federal power has been expanded at the cost of the residual State power. After the second world war, the United States Supreme Court has removed substantially the restrictions that previously existed upon the national power so much so that the scope of national authorities has become a question of Government policy, and has substantially ceased to be one of constitutional law. Under this expansion scheme of national power subjects which were once regarded as State subjects have now been acknowledged as federal subjects. Australia also adopted the American plan of vesting the residuary powers in the State Legislatures under Sec. 107 of the Constitution. As a result the Commonwealth has only enumerated powers like the American Congress. Among the residual powers of a State in Australia, education, local government, police, criminal law, company law, railways, irrigation, price control and others are subjects coming within the scope of the residuary powers of a State.

In Canada the process of vesting residuary powers in the States has been reversed because it was thought that it resulted in weakness of the Federal Government. Residuary powers were therefore vested in the Dominion Parliament, conferring on the Provincial Legislatures only such powers as might be required for local purposes. (refer Sec. 51 of the British North America Act).

Under the Government of India Act, 1935, residuary powers were given neither to the Federation nor to the Provinces but remained vested in the Governor-General, acting in his discretion (Sec. 104 of the 1935 Act).

Under *our* Constitution the Lists are so exhaustive that there is hardly anything left for the residuary field, and every List is larger as compared to the Lists under the 1935 Act. It is further provided that "resort to the residual power should be as *pis aller*. It is only when all the categories in the three lists are *absolutely* exhausted that one can think of falling back upon a *non-des-*

*cript.*" Following upon this principle no case for invoking the residuary power under our Constitution has yet been reported.

II. *Power of Parliament to Legislate in the National Interest* (Art. 249). The second case where Parliament can legislate with respect to matters in the State List or Concurrent List is one where it is necessary in the national interest that Parliament should so act. Art. 249 lays down case or cases under which Parliament should legislate in the national interest.

It follows from this that one of the parties to the federation can by its unilateral action, alter the distribution of powers made under *our* Constitution. Under the American Constitution as the division of powers is rigid, the federal Government cannot alter the distribution of powers made by the Constitution or transfer to itself the powers that were reserved to the States by the Constitution. This can only be done by affecting an amendment to the Constitution. The same procedure is followed in Australia. In Canada, whenever a subject assumes national importance, and even though the subject is within the exclusive sphere of the Provincial Legislature the Judiciary has enabled the Dominion Parliament to legislate as regards provincial or local subjects. (Refer Sec. 91 of the British North America Act). When the crisis is over the matter may cease to be of national importance and the subject would then automatically revert to the local jurisdiction. It is for the Courts and not for the Dominion Parliament to lay down the *line of necessity* in each case.

We have seen above that the object of the framers of *our* Constitution was to impart as much strength to the Central Government as possible, within the frame-work of a Federal Constitution and in doing so they have gone beyond the Canadian Constitution. Art. 249 of *our* Constitution empowers the Union Parliament to take up for legislation *by itself any matter* which is specially enumerated in List II, whenever the Council of States resolves by a two-thirds majority that such legislation is 'necessary or expedient in the national interest.' It follows that no emergency is necessary for assumption of the State powers by Parliament under Art. 249. The resolution of the Council of States is conclusive as to whether any national interest exists and Parliament is automatically empowered to make laws with res-

pect to that item. *Our* Courts have therefore no say on this point whether Union legislation is really required in the national interest or not.

III. *During Proclamation of Emergency* (Art. 250). Thirdly, Parliament has power to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. The Parliament can make laws for the whole or any part of India with respect to any of the matters enumerated in the State List, in order to cope up with the situation at that particular moment.

Art. 250 follows the pattern laid down in Sec. 102(1) of the Government of India Act, 1935. This Article provides that under a *Proclamation* of Emergency, the Union Parliament shall have powers as wide as those of the Legislature of a unitary State, in order that it may adequately cope with the situation.

The power of declaring a state of emergency vests with the head of the Executive, subject to ultimate Parliamentary sanction. The period of emergency under *our* Constitution has been reduced to two months as compared to a period of six months under the Act of 1935. This Proclamation can be made on two points—namely, firstly, when a part of the territory of India is threatened and secondly, when there is a fear of external aggression, short of war. As under the Act of 1935, the Courts shall have no power to question the validity of any Proclamation made by the President on the ground that it is not justified by the existence of any of the grounds mentioned by the Constitution as constituting 'grave emergency'. It would be sufficient if the President is satisfied that there is imminent danger as a result of which he has thought it fit to make the Proclamation. Of course, the President can only make such a Proclamation under Ministerial advice.

In case of inconsistencies between laws made by Parliament under Arts. 249 and 250 and laws made by the Legislatures of States, the law made by Parliament whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

IV. *Power of Parliament to Legislate by Consent of States.* Fourthly, Parliament can legislate for two or more States by their consent. While Art. 263 provides for the creation of an Inter-State Council for effecting co-ordination between the States in matters of common interests, the present Article provides the Legislative means to attain the object.

In the United States' Constitution, the Congress is not entitled to legislate even with the consent or submission of the States. The powers of the Congress can only exist as are granted under the Constitution. The sovereignty of the States essential to its proper functioning cannot be surrendered. In Canada also it is contemplated under the Constitution (Secs. 91 & 92) that there should be perfect co-operation between the Dominion on the one hand and the Provinces on the other with respect to their legislative functions.

Our Constitution follows the Canadian and the American patterns and there was no other way by which the Union legislature could legislate by the consent of the States because the Supreme Court has held that the Union and State Legislatures cannot delegate their powers to each other. It would follow that such transference of powers cannot be made even by the consent of the parties. The only mode of enlargement of the powers of the Union by consent of the State is, therefore, laid down in Art. 252 which, in fact, forms an exception to the general principle that the powers of the Federation cannot be enlarged by the consent of the States. Art. 252, therefore, is the *only* provision in the Constitution with the help of which the powers of the Union can be enlarged by the consent of the States.

V. *Legislation for giving Effect to International Agreements* (Art. 253). Lastly, Parliament has power to make any law for the whole or any part of the territory of India, for implementing any treaty, agreement or convention with any other country or any decision made at any International conference, association or other body.

Under Art. VI of the United States Constitution all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in

every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. In Canada, the Dominion Parliament has the exclusive power to implement a treaty when it comes within sec. 132 or where the general residuary power under sec. 91 is applicable. Under the Australian Constitution, however, there is no separate provision as regards the treaty-making power or the implementation of treaties. The "external powers" as included in Sec. 51 of the Constitution extends to agreements entered into by Australia and Commonwealth Legislatures to give effect to such agreements is valid, despite its effects on State control or transport within its borders.

Under Art. 253 the Union Parliament is empowered to invade List II for the purpose of implementing the treaty obligations of India. The power of treaty-making and implementing of treaties granted to the Union Parliament under Entry 14 of List I, was not sufficient to implement India's obligations under treaties or international agreements.

## II. Administrative Relations (Arts. 256-263)

In any federal scheme which sets up dual governments and division of powers must have provisions which establish relations between the Union and States and between States *inter se*. There is no doubt that the success and strength of the federal policy will depend upon the co-operation and co-ordination between the Governments in the interests of the country as a whole. Under Arts. 256 and 257 it is provided how the executive power of the State should be exercised; Art. 258 lays down the power of the Union to confer powers etc. on States in certain cases. Art. 259 deals with armed forces in Part B States of the First Schedule; Art. 260 deals with the jurisdiction of the Union in relation to the territories outside India. Art. 261 is in the nature of a 'directive principle' so far as judicial decisions of the Union and State Courts are concerned. Under Art. 262 the Parliament has power to enact laws in order to provide for adjudication of disputes relating to waters of inter-State rivers or river valleys. Art. 263 deals with the power of the President to appoint an inter-State Council for the purposes of co-ordinating State activities, promo-



ting inter-State co-operation and resolving inter-State disputes. The functions of this Council are purely advisory.

*The exercise of Executive Power of States* (Art. 256). Under Art. 256 the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of that State shall extend to the giving of such directions to that State as may appear to the Government of India to be necessary for that purpose. It means that it is the constitutional duty of every State to enforce Union laws as are applicable in that State. Further, the Executive of the Union shall have the power to give directions to the State Government to ensure the due compliance with the above duty, namely, the enforcement of the Union laws.

Under Art. 257 the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of all necessary directions to a State including directions as to the—(i) construction and maintenance of means of communications of the national and military importance, and (ii) measure to be taken for the protection of the railways within the State. All costs incurred in the carrying out of these two directions may be paid by the Government of India to the State. The object of this Article is to prevent any conflict between the executive policy of the States and that of the Union. Under Entry 13 of List II, communicating generally is a State subject and the present article empowers the Union to direct the State for the proper maintenance of means of communication which that executive direction may declare to be of 'national' or 'military importance'. Railways are a Union subject under Entry 22 of List I, but 'police', including 'railway police' is a State subject under Entry 2 of List II. The Union Executive is empowered to give directions to the State to employ its police for the proper protection of the railways and their properties and to employ additional police, if necessary, subject to contribution under cl. 4 of Art. 257.

Under Art. 258 the Union Government has power to confer powers, etc., on States in certain cases in relation to any matter

to which the executive power of the Union extends. With respect to such a delegation of power the State Legislature has no power to make laws, confer powers and duties or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof. The expenses for carrying out these directions by virtue of such a delegation of power will be borne by the Government of India to the State as may be determined by the agreement in this connection, or, in default of such an agreement as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Art. 259 is a special provision made for States in Part B. The armed forces belonging to these States at the commencement of the Constitution are allowed to be maintained by these States— (a) as parts of the Union forces, (b) subject to the orders of the President, and (c) until Parliament by law otherwise provides.

Art. 260 deals with the jurisdiction of the Union in relation to territories outside India and enables the Union to assume executive, legislative or judicial powers in respect of any territory outside India, by agreement with that State. Such an agreement is to be governed, subject to the laws made under Entry 16 of List I, relating to 'foreign jurisdiction'.

Under Art. 261 it is laid down that full faith and credit shall be given throughout India to public acts, records and judicial proceedings of the Union and of every State and final judgments or orders passed by civil courts in any part of India shall be capable of execution anywhere within the territory of India according to law. This Article follows Art. IV, Sec. 1 of the American and Sec. 118 of the Australian Constitutions, *mutadis mutandis*. It can be seen that this article merely lays down a rule of evidence as in the United States, while the substantive effect of the Acts, records, etc., is to be determined by Parliament by law. By 'public acts' is meant not only the statutes but also all other legislative and executive acts of the Union and the States, such as orders, regulations, etc. But it does not mean that the Courts of one State will necessarily follow the construction given by the Courts of other States to its statutes. The Court of one State is

not bound by the interpretation given by the Courts of other States because the jurisdiction of each State is confined to its own territory under Art. 245(1) and the Acts and records of one State may be refused to be recognised in another State without a provision as mentioned in the present Article, because after all, all legislation is *prima facie* territorial.

With regard to the execution of judgments or orders under Cl. (3) of Art. 261, provides that under *our* Constitution, any executive civil judgment or order of any State shall be directly executable in any other State or territory within India without requiring a fresh action upon that judgment. It is a rule which is contrary to that in the United States, where it has been held that though one State will not question the validity of the judgments of another State, such judgments are not directly executable. The question whether Art. 261 of our Constitution is retrospective or not has been dealt with by different High Courts differently. The High Courts of Bombay, Hyderabad, Madhya Bharat and Jammu and Kashmir have held that since after the commencement of the Constitution, a Court in an Indian State has ceased to be a 'foreign Court', a pre-Constitution decree of an Indian State is executable even after 26-1-1950 in any part of India, as if it has been passed by a Court in another part of India, and an Indian citizen cannot resist execution of an ex-parte decree passed by a Court in an Indian State. The High Courts of Travancore-Cochin, Mysore, Nagpur and Saurashtra have held that this Article is not retrospective in effect and the Calcutta High Court has agreed with this view. The Supreme Court has not finally decided on this point. It is certain that according to the First Schedule, the territories of the pre-Constitution Provinces and Indian States have become the territories of India after the commencement of the Constitution. In spite of this it is a moot point whether Art. 261(3) of the Constitution should be given a retrospective effect so as to take away the pleas available to a defendant-judgment-debtor founded on the fact that the decree was a foreign decree when it had been passed.

#### **Inter-State Council (Art. 263)**

Under this Article the President is empowered to establish an Inter-State Council if at any time it appears to him that the

public interest would be served by the establishment of a Council charged with the duty of—

(a) Enquiring into and advising upon disputes which may arise between States;

(b) Investigating and discussing subjects in which some or all of the States of the Union and one or more of the States have a common interest; or

(c) Making recommendations upon any such subject and, in particular, recommendation for the better co-ordination of policy and action with respect to that subject. The President in establishing such a Council shall define the nature of the duties to be performed by it and its organisation and the procedure. Under this power conferred on him by Art. 263 the President has established a Central Council of Health, which is an advisory body having the duties to consider and recommend broad lines of policy in regard to matters concerning health in all its aspects, such as the provision of remedial and preventive care, and environmental hygiene, nutrition, health education, and to make proposals for legislation in fields of activity relating to medical and public health matters; to examine the whole field of possible co-operation between different States with regard to quarantine during times of festivals, outbreaks of epidemics and serious calamities such as earthquakes and famines; and to make recommendations to the Central Government with regard to the distribution of available grants-in-aid for health purposes to the State and to review periodically the work accomplished in different areas through the utilisation of these grants-in-aid. Similarly, in 1954 the Central Council of Local Self-Government was established in order to consider and recommend broad lines of policy in regard to matters concerning local self-government in all its aspects, throughout the country.

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## CHAPTER 14

### FINANCE, PROPERTY, CONTRACTS AND SUITS

#### (Arts. 265-300)

Under Arts. 265-300 we have to deal with subjects like finance; the borrowing powers of the Union as well as the States and other propositions as to property, contracts and suits.

#### Finance (Art. 265-291)

*General Propositions as to taxation* : Art. 265 lays down that no tax shall be levied or collected except by authority of law. It follows the English principle established by the Bill of Rights, 1689 that "levying money for the use of the Crown by pretence of prerogative without grant of Parliament is illegal." It was this principle which established Parliamentary Government in England and which made the King summon Parliament annually in order to obtain supplies, as Parliament would not grant more than what was sufficient to meet the requirements of one year. This Art. 265 embodies the English principle of 'no taxation without representation'. Taxation, in order to be valid, must not only be authorised by a statute, but must also be levied or collected in strict conformity with the statute which authorises it. The levy or collection of tax, therefore, cannot be done by mere resolutions of the Houses of the Legislatures or any Executive action. Further, the subject is not taxable by inference or by analogy but only by the plain words of a statute applicable to the facts and circumstances of the case.

The Supreme Court has held that the right not to be subjected to imposition or collection of taxes save by authority of law which is conferred by Art. 265 is not a fundamental right and, hence, it cannot be enforced by an application under Art. 32. But in case where the impositions, such as a licence fee or

a sales tax, which are in the nature of restrictions upon a fundamental right, and if the imposition is without legal authority, remedy under Arts. 32 or 226 would lie.

Under Art. 285 the property of the Union shall be exempt from all taxes while under Art. 289 all the property and income of a State shall be exempt from Union taxation.

No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place; (a) outside the State; or (b) in the course of the imports of goods into, or export of the goods out of the territory of India; or in the course of inter-State trade or commerce (Art. 286(1), (2)).

Art. 286 which deals with the imposition of sale and purchase of goods is a headache both for the people and the Courts. The Supreme Court has tried to give the correct interpretation of this Article. It may be stated that Art. 286 is not retrospective since there is nothing in the article to suggest that it is retrospective. All liabilities after 26-1-1950 would necessarily be governed by Art. 286.

Art. 286 prohibits the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State, or it takes place in the course of the import of the goods into or export outside the territory of India. In short, States cannot realise Sales Tax in cases where the goods are sold to dealers of other States or to foreign dealers.

### **Consolidated and Contingency Funds (Arts. 266-267, 283-284, 289 and 291)**

The Consolidated Fund of India is a reservoir with regard to the resources of the Union and as such it is termed as the Union Consolidated Fund of India. A similar fund is also to be known as the Consolidated Fund of the State which is the reservoir of the resources of a State. No moneys can be issued out of this fund except in accordance with a valid law made by the Legislature concerned. All revenues received, all loans raised by the issue of Treasury Bills, and all moneys received by the Government of India or by the Government of a State shall form

one consolidated fund called "The Consolidated Fund of India," or "The Consolidated Fund of the States," as the case may be. Moneys from such a fund cannot be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution (Art. 266(1)).

All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be (Art. 266(2)). Further, all sums to be paid to any Ruler of a State as privy purse shall be charged on, and paid out of, the Consolidated Fund of India; and the sum so paid to any Ruler shall be exempt from all taxes on income (Art 281).

### **The Contingency Fund of India or a State (Art. 267)**

The necessity of having a Contingency Fund is on account of the fact that under the New Constitution, every item of expenditure requires the prior sanction of the Parliament or the State Legislature as the case may be. When an unexpected demand is to be met with and when there is no time to get the sanction of the Parliament or State Legislature, Art. 267 provides that the Parliament may by law establish such a Fund in the nature of an imprest to be entitled the Contingency Fund of India into which shall be paid from time to time such sums as may be determined by law, and the said fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under Art. 115 or Art. 116 which provides for the creation of the Contingency Fund of the State by a State Legislature and which is at the disposal of the Governor or Rajpramukh of the State as the case may be.

It follows that Art. 267 authorises the creation by Parliament of a Contingency Fund of the Union or by the Legislature of a State for that State, the amount to be deposited in this Fund which will be determined by laws made by the Parliament or the State Legislature as the case may be from time to time. The Fund is at the disposal of the Executive to enable him to make

such advances for the purposes of meeting unforeseen expenditures.

The custody of the Consolidated as well as Contingency Funds shall be regulated by Rules made by the President or the Governor or Rajpramukh of a State as the case may be (Art. 284)

### **Distribution of Revenues between the Union and the States (Arts. 269-282)**

The Articles with regard to the distribution of revenues as between the Union and the States are based on the latest development in the world with regard to the distribution of fiscal powers as between the Union and the States. Some taxes are entirely allotted to the Union while some are given to the States. Some taxes the Union collects and distributes the same among the States. The demarcation of these powers as between the Centre and the State is very clear and no Constitution in the world has paid so much of attention to this demarcation as is done in *our* Constitution. In India, the Centre has expanding and elastic sources of revenue and for this purpose the Canadian and Australian Constitutions are our chief sources of inspiration. The Centre gives grants and as regards the borrowing powers it has a control over the States. Under these provisions the Centre exercises its power evenly and co-ordinates everything through the instrumentality of these provisions which are reviewed every five years.

Art. 268 deals with the duties levied by the Union but collected and appropriated by the States. Under this category, stamp duties, duties of excise on medicinal and toilet preparations as are mentioned in the Union list are levied by the Government of India but are collected by the States. The proceeds of such duties do not form a part of the Consolidated Fund of India but are wholly assigned to the State in which such duties are collected.

Under Art. 269 duties and taxes are levied by the Union but are assigned to the States. These duties are :—

1. Duties in respect of succession to property and estate duty in respect of property, other than agricultural land;



2. Terminal taxes on goods or passengers carried by rail ways, sea or air;

3. Taxes on railway fares and freights; on transactions in stock-exchanges and future markets and on the sale or purchase of newspapers and on advertisements published therein.

Under Arts. 270 and 272 the taxes are levied by the Union but are distributed between the Union and the States. Such taxes are levied on incomes other than agricultural income which are levied and collected by the Government of India but a prescribed percentage of the net proceeds in any financial year of any such tax is assigned to the States specified in Part A and B of the First Schedule within which such a tax is leviable (Art. 270). Parliament may at any time increase any of the duties or taxes referred to above (Art. 271). Further, Union duties of excise are levied and collected by the Government of India but a part of the net proceeds of such duties may be divided between the Union and the States (Art. 272).

*Procedure as to Bill amending imposing or varying any tax* (Art. 274). Under Art. 274 Bills having the object of affecting taxation in which the States are interested cannot be introduced in Parliament without the previous recommendation of the President because such an alteration of financial distribution is likely to affect the federal character of the Constitution, as a result of which a bar is imposed by this Article upon the introduction of such legislation by private members. Under this article the Taxation Laws (Extension to Jammu and Kashmir) Bill, 1954, and the Madhya Bharat taxes on Income (Validation) Bill, 1954, were introduced in Parliament with the recommendation of the President under this Article.

The provisions of Art. 274 are as follows :—

1. No Bill or amendment which imposes or varies any tax or duty in which States are interested, or

2. which affects the principle on which moneys are distributable to States, or

3. which imposes any surcharge for the purposes of the Union—shall be introduced or moved in either House of Parliament except on the recommendation of the President.

### **Grant from the Union to States (Art. 275)**

This Article empowers the Parliament to aid needy states by grants known as grants-in-aid to States. Such sums as Parliament may by law provide for the States shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenue of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States including Assam. But after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendation of the Finance Commission. Under these recommendations, the President has made the Constitution (Distribution of Revenues) Order, 1953, according to which the States of Assam, Mysore, Orissa, Punjab, Saurashtra, Travancore-Cochin and West Bengal will receive general grants as specified in that order, while the States of Bihar, Hyderabad, Orissa, Patiala and East Punjab States Union, Punjab shall receive specific grants for the expansion of primary education for the period 1953-1957.

### **The Finance Commission (Arts. 280-281)**

We have stated above that no Constitution in the world lays down such detailed distribution of fiscal powers as between the Union and the States as the Constitution of India. As a matter of fact it is not possible in a Federal Constitution to lay down the division of financial resources between the Federal and Regional Governments unless there exists a machinery for the necessary adjustment and reallocation in the light of changes in conditions. The Finance Commission serves as such a machinery under our Constitution.

The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year, constitute a Finance Commission consisting of a Chairman and four other members to be appointed by the President. Accordingly the Finance Commission was appointed in 1951, whose report was presented to Parliament in February 1952, and whose recommendations were incorporated by the President promulgating the Constitution (Distribution of Re-

nue) Order, 1953, and by Parliament enacting the Union Duties of Excise (Distribution) Act of 1953.

The duties of the Commission are laid down in Art. 280(3). The Commission is expected to make recommendations to the President as to :—

a) The distribution between the Union and the States of the net proceeds of taxes to be divided between them and the allocation between the States of the respective shares of such proceeds;

b) The principle which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

c) The continuance of modification of the terms of any agreement entered into by the Government of India with the Government of any State; and

d) Any other matter referred to the Commission by the President in the interest of sound finance.

Under Art. 281 the President shall place the recommendations of the Finance Commission before each House of Parliament.

### **Property, Contracts, Rights, Liabilities, Obligations and Suits (Arts. 294-300)**

Prior to the Government of India Act, 1935, Government in India was unitary and there was no question with regard to the separate property belonging to the Government of India or the property belonging to the Provinces. All property was held by the Secretary of State-in-Council which was also liable to be sued and had a right to sue. The Act of 1935 divided the assets and liabilities into two—one part was allotted to the Government of India technically known as 'held by His Majesty for the purposes of the Government of the Federation', and the other vested in the different Provinces. At the commencement of our Constitution, by Art. 294, properties so vested continued to be vested in the Central Government and in the States in Part A

being successors of the Provinces constituted under the Act of 1935. Similarly all properties and assets which were vested in any Indian State shall, after the commencement of the Constitution, vest in the Union. Similarly, any property which would have accrued to His Majesty or to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State vest in such a State, and shall, in any other case, vest in the Union. Likewise, all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and shall be held for the purposes of the Union (Art. 297).

### **Privy Purse Sums of Rulers (Art. 291)**

Prior to the integration of the States on the eve of this Constitution, there was hardly any distinction between the private or personal expenses of the rulers and the expenses of the administration. Being absolute Sovereigns, they had an unrestricted right to draw from the revenues of their respective State Treasuries. The accession of these States to the Union of India, and the surrender by the Rulers of all their powers under a covenant, the Government of India guaranteed and assured fixed sums to these Rulers who had lost their powers, in the form of a Privy Purse which was intended to cover all the expenses of the Ruler and his family. Different Rulers were allotted different sums to cover their personal expenses.

In order to guarantee the payment of the Privy Purse, it is provided by clause (1) (a) of Art. 291 that such sums shall be charged on the Consolidated Fund of India and that the payments shall be out of that Fund only. Clause 1 (b) guarantees exemption of the Privy Purse from Income-Tax which is already assured by the Agreements and Covenants. But this exemption does not extend to any other income of the Ruler or his family. Some of the States which were merged into the Provinces have been paid from the Contributions received from the States in Parts A and B to the Union credited to the Consolidated Fund of Union from which the whole amount of the Privy Purse is paid to the respective ruler.

**Corporation Tax (Art. 366(6) )**

A Corporation tax means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—

a) that it is not chargeable in respect of agricultural income;

b) that no deduction in respect of the tax paid by companies is, by any enactment which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian Income-Tax the total income of individuals receiving such dividends or in computing the Indian Income-Tax payable by, or refundable to such individuals.

“In other words, a Corporation Tax is a tax on such part of the income of companies (not being agricultural income) as was not subject to the application of legislation authorising deduction of the tax for payment of interest or dividends or representing a distribution of profits.” (Basu).

[Refer Sec. 311(2) of the Government of India Act, 1935].

## CHAPTER 15

### PUBLIC SERVICE COMMISSIONS

(Arts. 315-323 & 378)

We have seen that for the purposes of the efficient and smooth working of the Governmental machinery it is necessary to recruit best talent in the country impartially. It is for this purpose that a Public Service Commission has been constituted at the Centre together with such Public Service Commissions in the different States for the purposes of performing various duties as laid down in our Constitution. Under Art. 315, the Union shall have a Public Service Commission as well as there shall be a Public Service Commission for each State. But two or more States may agree to a Joint State Public Service Commission, known as Joint Commission, to serve the needs of those States if Parliament by law so provides after a resolution to that effect is passed by the House (Art. 315(2) ).

The Chairman and other members of the Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission, by the President and in the case of a State Commission, by the Governor or the Rajpramukh of that State. Every member of a Public Service Commission holds office for six years from the date of his appointment or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years. One-half of the members of every Public Service Commission must have occupied some office for a period of at least ten years under the Government before being appointed as members of the Service Commission. A member so appointed may by writing under his hand addressed, in the case of Union Commission or a Joint Commission, to the President, and in the case of a State Commission to the

Governor or the Rajpramukh of the State, resign his Office. (Art. 316).

The Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on enquiry, reported that he should be removed. The President may in the meanwhile, suspend such a member (Art. 317).

Under Art. 317(4) misbehaviour means and includes the conduct of the member who is concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of the State or if he participates in the profit thereof or any benefit or emolument arising therefrom otherwise than as a member and in common with other members of an incorporated company. However, under Art. 317(3) the President may of his own motion, remove such Chairman or member if he is adjudged an insolvent, or if he engages during his term of office in any paid employment outside the duties of his office, or is in the opinion of the President unfit to continue in the office by reason of infirmity of mind or body.

The members of the Public Service Commission holding office immediately before the commencement of this Constitution shall, become on such commencement the members of the Public Service Commission for the Union or for the corresponding State as the case may be (Art. 378).

### **Functions of Public Service Commissions (Art. 320)**

In performing their functions under Art. 320 the status of such Commissions shall be advisory and never executive. The reason why mandatory powers could not be given to the Public Service Commission is that in this case, it would not be possible for the Executive to carry on the administration with responsibility. It would amount to setting up two Governments at the Centre or in a Province and there is every thing to be said against such a procedure. So, the Public Service Commission shall merely express its opinion to the respective authority, and it will not be obligatory upon the latter to accept that opinion

or recommendation. But under Art. 323 a provision has been made that annually, the President or the Governor shall have to explain to the Legislatures the reasons why in particular cases the advice of the Commission could not be accepted. This can be considered as a safeguard against arbitrary action by the Executive in disregard of the commission's advice. The functions of such Commissions are *four* and they are as follows:—

1) Conduct examinations for appointments to the services of the Union and the services of the State respectively.

2) Assist other States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

3) Advise on any of the following matters referred to them, namely :—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts; and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a government servant including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a government servant that any cost incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty to be paid out of the Consolidated Fund of India or as the case may be, out of the Consolidated Fund of State;

(e) on any claim for the award of pension in respect of injuries, sustained by a Government servant and any question as to the amount of such award; and

(f) on any other matter which the President, the Governor or the Rajpramukh of the State, may refer to them.  
(Art. 320)



The President in respect of the All-India Services or the Governor or the Rajpramukh in respect of services of a State, may make regulations specifying certain matters with respect to which it is not necessary to consult the Public Service Commission.

Under Art. 16(4) it is provided that nothing shall prevent the State from making any provision for the reservation of appointment or posts in favour of any Backward class citizens, which in the opinion of the State, is not adequately represented in the Services under the State. In such matters the Public Service Commission shall not be consulted.

Under Art. 323 the Union Commission shall present to the President or the State Commission to the Governor or the Rajpramukh as the case may be, a report as to the work done by the Commission and the President or the Governor shall cause a copy thereof explaining as respects the cases where the advice of the Commission was not accepted, the reasons for such non-acceptance, are all to be laid before each House of Parliament or before the Legislature of the State. Such a report shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are laid.

*When the Public Service Commission is to be consulted.* The Supreme Court in *John v. State of T.C.*, 1955, S.C.A. 85, has explained the scope of the consultative power of the Public Service Commission. They maintain that the Commission should be consulted whenever a Government servant presents a petition relating to disciplinary matters affecting him. It requires that the Commission should be consulted before a decision is taken against him. But when once an action is taken against the servant, there is no obligation to consult the Commission if the Government servant presents a petition for review after action has been taken against him.

It is further laid down that the Commission should *normally* be consulted at *two* stages; (a) to determine whether the Government servant is guilty of the charges and whether he should be called upon to show cause against the punishment tentatively

proposed, (b) to determine whether the action proposed shall not be taken against him, after he has shown cause. From this it follows that the Government servant should avail himself of the second opportunity. If he does not do so then the Government which has already consulted the Commission on the first point would be justified in not consulting the Commission after the passing of the punishment.

The Calcutta High Court has held in *Munna Lal v. Herold Scott*, 1953, that the Government must consult the Public Service Commission on all disciplinary matters affecting civil servants although it was not obligatory upon the Government to accept the advice of the Commission. However, the Division Bench of the Calcutta High Court has held that the provisions of Art. 323 itself indicate that the advice given by the Public Service Commission may not be accepted in certain cases and hence a failure to consult the Commission does not render the disciplinary proceedings inoperative, if they are otherwise valid. But another Division Bench, on an appeal from Munna Lal's case, has differed from the reasoning advanced in the above matter, and has held that the very fact that the proviso to Art. 320(3) empowers the President or the Governor to specify the matters or classes of cases in respect of which consultation of the Commission shall not be necessary shows that in the absence of any such specification under the proviso, or outside the classes of cases so specified, consultation of the Commission must be held to be obligatory and therefore it is not open to Government to refuse to consult the Commission in any case it likes.

Under Art. 321 Parliament, by an Act, or, the Legislature of a State, may provide for the exercise of additional functions by the Commissions as the case may be with regard to services in the Union or the States and also with regard to the services of any local authority or other body corporate constituted by law or of any public institution.

The expenses of the Union or a State Public Service Commission including any salary, allowances and pensions payable to the members or staff of the Commission, shall be charged on the respective Consolidated Funds.

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## CHAPTER 16

### ELECTIONS

(Arts. 124, 324-329)

With the rise of modern democracies, the whole problem of Government has undergone a radical transformation, for the source of authority has now been transferred from the Ruler to the people. The latter have therefore been compelled to organise themselves for the exercise of this authority. They have to do so by making a selection of those of its members who shall act for them. The body of citizens exercising this right constitutes what is known as the Electorate. It is a distinct branch of the political system of a country and has clearly definite functions to perform. For this purpose it is necessary to set up an elaborate machinery and *our* Constitution lays down the laws as to the constitution, powers, duties, functions, etc., of the Election Commission.

The President under Art. 324 appoints the Chief Election Commissioner and other Election Commissioners. The Chief Election Commissioner acts as the Chairman of the Election Commission.

#### Its Functions (Art. 324(1)).

This article provides for the creation of an independent body with exclusive powers to decide certain matters pertaining to the election of the members. It is the duty of this Commission to decide all matters pertaining to the technicalities relating to such elections and if there is any doubt or dispute as regards the *qualifications* of members of the Legislatures the President or the Governor shall decide it, in consultation with the Election Commission, but in case of doubts relating to *elections* the same shall be decided by the Election Tribunals appointed by the Election Commission. This becomes clear when Art. 103 is read with

Art. 192. Further, there is no specific provision in *our* Constitution for appeals from the decisions of Election Tribunals, but it has been provided that *judicial review* can be taken of decisions of all Tribunals including an Election Tribunal by means of extraordinary remedies of appeal to the Supreme Court by special leave under Art. 136 and by a petition to the High Court for an appropriate writ under Art. 226. These powers of the Courts cannot be fettered in any way by any legislation.

The Commission is enjoined under Art. 324(1) to superintend, direct and control the preparation of the electoral rolls for, and conduct *all* elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President including the appointment of Election Tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament and to the Legislatures of States. It has also the power to advise the President on the question of disqualification of any member of the Parliament or a member of a State Legislature.

The Election Commission, therefore, is a *centralised body* which alone is entitled to conduct elections in the country. Of course, in the discharge of its duties it is helped by regional offices, which are created by this centralised body, which must work under the control and guidance of the Election Commission and not under the control of the State Governments. The Regional Commissioners will not be liable to be removed except on the recommendation of the Chief Election Commissioner. Even the members of the Election Commission shall not be removed by the President except in a manner provided in Art. 124(4), which relates to the removal of a Judge of the Supreme Court. The object of providing such safeguards is to ensure an election free from the control of the party in power for the time being, without which representative democracy becomes a mockery.

#### **Jurisdiction of the Supreme Court over Election Tribunals**

It is now clear that the Supreme Court would interfere with the decision of an Election Tribunal only under a special leave granted under Art. 136(1) on the following grounds :—

1. Where the Tribunal does not perform its duty under the law;

2. Where the Tribunal misdirects itself upon the question whether the improper acceptance of a nomination paper materially affected the result of the election and proceeds upon a speculative view of things;

3. Where the Tribunal sets aside an election upon a wrong view of the law;

4. Where the Tribunal sets aside the entire election while only one of the candidate was disqualified owing to under-age;

5. Where its decision is without proper jurisdiction.

### **Jurisdiction of High Court over Election Tribunals**

The same grounds upon which the Supreme Court can set aside the order of a Tribunal the High Court can also interfere with the decision of an Election Tribunal on the following grounds :

- (a) that the Tribunal acted without jurisdiction,
- (b) that it has not performed its duty under the law,
- (c) that the Tribunal has acted against the principles of natural justice or there is an error on the face of the record.

But the Court would not interfere on the ground that the exercise of a discretionary power by the Tribunal has not been proper or that the decision of the Tribunal is vitiated by an error of law, not affecting jurisdiction.

### **Advisory Functions of Election Commissions (Arts. 103 & 192(2) ).**

If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Art. 102, it shall be referred for the decision of the President and his decision shall be final. But before giving any decision the President shall obtain the opinion of the Election Commission and shall act according to such opinion. The same rule applies with reference to a question arising with regard to a member of a House of Legislature of a State who has become subject to any of the disqualifications under Art. 191. But the decision of *election disputes* is to be made by election tribunals under Art. 324(1).

### Adult Suffrage (Art. 326)

Where a political community is composed of members who are capable of expressing an intelligent opinion regarding matters of general interest, the problem of providing a voting system through which their *general will* might be expressed is not comparatively simple. In all communities there will always be a certain proportion of the people who are not fit to exercise political authority (persons of immature age, unsound mind, uncivilised or partly civilised tribes, etc.). This problem is important because it raises the serious and difficult problem of locating sovereignty in a particular State. All civilised countries believe in broadening the base of electoral franchise and improving the machinery through which this can be exercised. For this purpose, property and educational qualifications were once laid down and in America Negroes were for a very long time debarred from exercising the vote. This right was given to them by the Fifteenth Amendment to the Federal Constituion which declared that every citizen of the United States has the right to vote and this right shall not be denied or abridged by the United States or any State on account of race, colour or previous condition of servitude. Different countries adopted the principle of universal adult franchise after a very long struggle. In England various Reform Bills had to be introduced in order to enfranchise the adult population of England. What England took about 100 years to achieve, Indians got it by one stroke of pen and Art. 326 provides that election to the House of the People and to the Legislative Assembly of a State shall be on the basis of unqualified adult suffrage; that is, every citizen of India, male or female, who is not less than 21 years of age and is not otherwise disqualified under this Constitution or by any law of the appropriate Legislature on the ground specified in this article, shall be entitled to be registered as a voter at such elections. The adoption of universal adult suffrage *without any qualification* of either education, property, taxation or the like, is a bold experiment, particularly when we realise that about 85% of the populace is illiterate. It was estimated that at the first General Elections there were about 170 million voters, which is even wider than the suffrage in the United States.

### **General Provisions as to Elections (Arts. 325-29)**

Art. 325 provides that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of one State and no person shall be ineligible for inclusion in any such roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Art. 326 provides that the elections to the different Houses shall be on the basis of adult suffrage.

Under Art. 327 Parliament is authorised to make any provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of the constituencies and all other matters necessary for securing the due constitution of such House or Houses. This article explains the legislative powers under Entry 72 of List I.

Under Art. 329 the validity of any law relating to matters mentioned under Art. 327 shall not be called in question in any Court. A similar provision is made for the elections to the House of Legislature of a State under Art. 329(a).

Lastly, no election to either House of Parliament or to the House or either House of the State Legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature (Art. 329(b)). This article therefore excludes the jurisdiction of the Civil Court to entertain any matter relating to election disputes. Pursuant to Art. 329(b), Parliament has enacted the Representation of the People Act (XLIII of 1951), Part VI of which deals with disputes regarding elections and the trial of election petitions by Election Tribunals.

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## CHAPTER 17

### OFFICIAL LANGUAGE

(Art. 343-351 & Sch. 8)

The problem of the language is a very peculiar feature of our Country. Excepting two Constitutions (Canada and Switzerland) there is no provision for language in any other Constitution of the world. Macaulay unwittingly introduced the English language in order to manufacture clerks but this unified the country, although only one per cent spoke the language in 1950. In spite of this, it is very instructive to see the extent of unity that it has created in this country which is noticeable when the question of change-over from English to Hindi comes up for discussion in any part of this country. There are fourteen languages and two hundred dialects being spoken in India. There is no doubt that we cannot create a nation without one common national language and we also cannot remain slaves to the English language. As a matter of fact, Hindi is being spoken by the largest number of people in this country and it has therefore acquired the status of our *lingua franca*. It is true that we must go slow in the beginning but it is absurd to suggest that we should wait till that time our Pundits create new terms and words equivalent to English terms. The provisions in our Constitution are sensible and are in the nature of a compromise.

Under Art. 343 it has been laid down that the official language of the Union shall be Hindi in Devnagari script and the form of numerals to be used for official purposes of the Union shall be the international form of Indian numerals. But the English language shall continue to be used for all official purposes of the Union for fifteen years from the commencement of this Constitution. It is left to the President to authorise the use of the Hindi Language in addition to the English language.



In order to implement the provisions of Art. 343, the President is empowered under Art. 344(1) to appoint a Commission after every five years from the commencement of this Constitution for the purposes of reporting to the President the ways and methods by which the English language should be substituted by Hindi during the period of transition. The Commission shall consist of a Chairman and such other members representing the different languages specified in Schedule 8. As required under this article, the Official Language Commission, under the Chairmanship of Mr. B. G. Kher has already been constituted, with a direction to report by April 1956.

The Commission has been requested to make recommendations to the President as to the progressive use of the Hindi language for official purposes of the Union, and suggesting ways and methods by which the use of the English language should be restricted. In making the recommendations the Commission is enjoined that it shall take into consideration the industrial, cultural and scientific advancement of India, and the just claims and interests of persons belonging to the non-Hindi speaking areas in regard to the Public Services.

Under Art. 344(4)(5)(6) the report of the Commission is to be examined by a Committee consisting of 30 members, of whom 20 shall be from the House of the People and 10 from the Council of States, whose duty it shall be to examine the recommendations of the Commission and to report to the President their opinion thereon. The President may, after considering the report, issue directions in accordance with the whole or any part of that report.

With regard to the language of the Supreme Court, and High Courts, it is laid down under Arts. 348 and 349 that all proceedings in these Courts, as well as the authoritative texts of Bills, Acts, passed by Parliament or State Legislature and of all Ordinances promulgated by the President or the Governor or Rajpramukh of a State, and all orders, rules, regulations, etc. shall be in the English language. But the Governor or Rajpramukh of a State may with the previous consent of the President authorise the use of Hindi or any language in its High Court.

Arts. 350 and 351 are in the nature of special directives for developing Hindi language within the period of 15 years from the commencement of the Constitution. It is laid down that the Union should promote the spread of Hindi language, develop it, so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in Schedule 8, and of drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

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## CHAPTER 18

### EMERGENCY PROVISIONS

(Arts. 352-360 & 365)

Our Constitution has laid down *three* kinds of emergencies; (1) internal disturbance, (2) foreign aggression or war, and (3) financial crisis. In all these cases the President issues a Proclamation of Emergency and the country works as a unitary State. The power of the President is absolute though in actual practice he only acts as the mouth-piece of the Cabinet. In any of the twenty-eight constituent States of different categories, if there is any disturbance or if the Constitution cannot work, the President issues a Proclamation by which the Parliamentary Government is suspended in that part for which the Proclamation has been issued or he may issue a Proclamation by which unitary Government is established at the Centre. The whole scene thus becomes transformed and the State becomes unitary. Such a provision is not to be found in any Constitution of the world. All federal systems including the American Federation are placed in a tight mould of federalism and no matter what the circumstances, it cannot change its shape and form. It can never be unitary. The Federation of U.S.A. was a Union of States originally independent and autonomous and who never wanted to surrender their sovereignty. But in India there was no such thing and our Constitution-makers have thought it expedient to include emergency provisions in our Constitution.

Under the Emergency provisions the Union can claim if it wants, (1) the power to legislate upon any subject even though it may be in the State List, (2) power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. "Such a power

of converting itself into a unitary State no federation possesses." (Dr. Ambedkar).

Under Arts. 352 and 360(1) the President, if he is satisfied that a grave emergency exists whereby the security of India or any part thereof, is threatened, whether by war or external aggression or internal disturbance, or that a situation has arisen whereby the financial stability or credit of India or any part thereof is threatened, he may, by a Proclamation make a declaration to that effect, even before the actual occurrence of war or any such aggression or disturbance or financial stringency.

Such a Proclamation may be revoked by a subsequent Proclamation and shall be laid before each House of Parliament. There are two cases in which the Proclamation ceases to operate :—

1. It ceases to operate after two months but not if it has been approved by resolutions of both Houses of Parliament; and

2. If the Proclamation is issued at the time when the House has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to above and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such proclamation has been passed by the House of the People before the expiration of the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution. But not if, before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People (Art. 352(2)).

*Effect of Proclamation of Emergency* (Arts. 353-354, 358, 359).

- (1) While a Proclamation of Emergency is in operation, then—(a) the executive power of the Union shall extend to the giving out directions to any State as to the manner in which the executive power thereof is to be exercised; (b) and the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition

of duties upon the Union, or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

(2) The President may direct that all or any of the provisions of Arts. 268 to 279, (which relate to the distribution of revenues) may be modified or shall have effect subject to exceptions or modifications as he may think fit.

(3) While a Proclamation of Emergency is in operation the provisions of Art. 19 may be suspended (Art. 358).

(4) While a Proclamation of Emergency is in operation, the President may declare that the right to move any Court for the enforcement of the fundamental right an all proceedings for such enforcement may be suspended (Art. 359).

The effects of a Proclamation of Emergency may be discussed under *four* heads, namely, executive, legislative, financial and fundamental rights.

*Executive* : When a Proclamation of Emergency has been made, the executive power of the Union shall, during the operation of the Proclamation, extend to the giving out directions to any State as to the manner in which its executive power is to be exercised.

*Legislative* : While the Proclamation of Emergency is in operation, the President may extend the normal life of the House of the People for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months after the Proclamation has ceased to operate. Such a Proclamation automatically enlarges the legislative competence of the Union Parliament and the limitation imposed as regards List II, by Art. 256(3), shall be removed. The Union Parliament shall have full power to legislate with regard to matters enumerated in List II.

*Financial* : During the operation of the Proclamation of Emergency, the President has the power to modify the provisions of the Constitution which lay down the allocation of financial relations between the Union and the State.

*Fundamental Rights* : During the operation of the Proclamation of Emergency, fundamental rights and all proceedings for such enforcement are suspended.

No occasion has so far arisen to make use of the power to make a Proclamation of Emergency under Arts. 353 and 354.

### **Proclamation on Failure of Constitutional Machinery in a State (Arts. 356-357 & 365)**

The above provisions relate to circumstances which have no connection with external aggression, internal disturbance or violence. The articles may be invoked where there is a *political* breakdown, such as want of a stable majority to form a Ministry even after a dissolution of the Legislature. It is certain that the power under Art. 356 will be exercised by the Union only as a matter of last resort,—when all other constitutional means fail, such as giving directions, warning, fresh election and the like. The first instance of the application of the present article took place on 20-6-51 in Punjab when an alternative Ministry could not be formed after the resignation of Dr. Bhargava's Ministry and the President promulgated two Orders under Art. 356.

If the President receives a Report from the Governor or Rajpramukh of a State that the constitutional machinery in the State has failed and if the President is satisfied that such a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may make a declaration to that effect. Such a Proclamation may be revoked or varied by a subsequent proclamation. Under Art. 365(1) & (2) it is sufficient if the President is satisfied that any State has failed to comply with or to give effect to any directions given in the exercise of the executive powers of the Union under any of the provisions of this Constitution, it shall be, lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

In such circumstances, the President assumes to himself all the functions and powers of Government of the State; and declares that the powers of the State Legislature shall be exercised by the Union Parliament. In such matters the Parliament empowers the President to make laws and to sanction expenditure from the Consolidated Fund of the State pending the sanction of

such expenditure of Parliament (Art. 357). Under this article, therefore, the President shall make the necessary provisions as he may deem fit in order to give effect to the objects of the Proclamation, but the President shall not assume to himself the powers of the High Court nor shall he suspend any provisions relating to a High Court. Every Proclamation under Art. 356 shall be laid before each House of Parliament.

Such Proclamation ceases to operate after two months but not if it has been approved by resolutions of both Houses of Parliament. But if the Proclamation is issued at the time when the House of the People is dissolved or if the dissolution takes place during the period of two months referred to above, and if the resolution approving the Proclamation has been passed by the Council of States, but no such resolution has been passed by the Lok Sabha before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the Lower House first sits after its reconstitution. But if the Lower House approves by resolution before the expiration of the said period of thirty days, the Proclamation continues to be effective for a period of six months from the date of passing of the second of the resolutions approving the Proclamation under Cl. (3) of Art. 356.

### **Proclamation of Emergency Distinguished from Proclamation of Failure of Constitutional Machinery in a State**

The two types of Proclamations differ not only as to the *grounds* leading to the Proclamation but also to the *effects*.

According to Basu, "the right to move the Courts for enforcement of fundamental right would not be affected in case of a Proclamation of failure of constitutional machinery but is liable to be suspended in case of Proclamation of Emergency (Art. 259). On the other hand, while the object of a Proclamation of Emergency is to confer greater powers of control upon the Union authorities the State authorities would not cease to function. In case of a Proclamation of failure of constitutional machinery, on the other hand, the Government of the State concerned or some part of it would be superseded by the Union (Art. 356(1)). In

short, Arts. 352-3 merely gives the Union concurrent powers of legislation and administration as regards State affairs while the State authorities continue to function; Art. 356 enable the Union to suspend the State Legislature altogether and the State Executive in whole or in part." [Commentary on the Indian Constitution, Vol. II].

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## CHAPTER 19

### AMENDMENT OF THE CONSTITUTION

(Art. 368)

The reason for introducing this provision in our Constitution is to introduce an element of flexibility in the Constitution. In the words of Pandit Nehru, "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the Nation's growth, the growth of living, vital organic people.....In any event we could not make this Constitution so rigid that it cannot be adopted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable to-morrow." Accordingly, our Constitution lays down *three* distinct modes for amendment of its different provisions :—

I. A very large number of provisions are open to alteration by the Union Parliament, by a simple majority, namely, the matters referred to in Arts. 4, 169 and 240. These matters will not be treated as "amendments of the Constitution."

II. In the case of a few matters relating to the federal structure of the Constitution a special mode is prescribed, namely, that the Bill for amendment must be passed by a two-thirds majority of the members of each House present and voting then, and ratified by the Legislatures of half of the States.

III. The remaining provisions of the Constitution shall be liable to be amended by Parliament by a majority of two-thirds of the members of each House present and voting, provided such majority exceeds fifty per cent of the total membership of that House.

## CHAPTER 20

### EPILOGUE

From the foregoing provisions of the Indian Constitution we can only conclude that our Constitution leans heavily towards the unitary nature. A unified citizenship, independent judiciary, provisions for unification in financial matters, the Centre stepping in State matters in emergency and national interest—are all pointers to a unitary form of Government rather than a true federation. Of course, we have got to consider the aims of a federal constitution and we can only say that the aim is GOOD GOVERNMENT suited to the needs of the people of the country. The important question is whether *our* Constitution has provisions which would suit the needs of *our* country. From what we have seen above we may answer this question in the affirmative. Our needs are supreme, more so since independence. Our federation was an imposed federation by a foreign Government at the time when the power was divided—a background which is peculiarly noticeable in *our* Constitution. The American, Canadian, and Australian Constitutions are real Federations coming together for defence or economic reasons. Ours is a reverse process and *our* Constitution of 1950 is a faithful reproduction of the Government of India Act, 1935, but with reference to the needs and circumstances of our country. Looking to the needs of our country, the historical background, our divisions, our minorities, our races and various complicated bodies, it was inevitable that in order that our country may progress, the Centre should have large powers and should be able to step in difficult times. But the States are not always subject to the Centre. A written Constitution is one thing, the exercise of powers is quite another. In course of time as we develop our responsibilities and produce men who would build up a true parliamentary government, the States will build themselves up and the control of the Centre will be lessened. The

No ratification by the State Legislatures will be required for these amendments.

There is no provision in our Constitution which cannot be amended and Parliament may, by passing the Constitution Amendment Act, in compliance with the requirements of Art. 368, amend even Act. 368 itself.

Until December, 1955, the Constitution has been amended five times of which the First and the Fourth Amendment Acts have made vital changes with regard to the fundamental rights enumerated in our Constitution.

*Procedure for amendment of the Constitution.* Art. 368 prescribes a special procedure in case this Constitution Act has to be amended. There are *four* steps laid down for this purpose.

(1) An amendment of the Constitution may be initiated by the introduction of a Bill for that purpose in either House of Parliament.

(2) When the Bill is passed in each House by a majority of the total membership of that House and by majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent.

(3) Upon receiving such assent, the Constitution shall stand amended in accordance with the terms of the Bill.

(4) If such amendment seeks to make any change in Art. 54 (Election of President); Art. 55 (Manner of Election of President); Art. 73 (Extent of Executive power of the Union); Art. 162 (Extent of Executive power of State); Art. 251 (High Courts for States in Part C of the First Schedule); Chapter 4 of Part V (The Union Judiciary); Chapter 5 of Part VI (The High Courts in States); Chapter 1 of Part XI (Legislative relations); The representation of States in Parliament; such amendments shall also require to be ratified by the Legislatures of not less than one-half of the States specified in Part A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendments is presented to the President for assent.

Parliamentary form of Government has functioned well both at the Centre and the States and for the development of our country *our* Constitution is very good.

Every Constitution that we have studied so far has some aim or in some way depicts the aspirations of the people. Our interest in any Constitution should be from the point of view of the aims and aspirations tried to be fulfilled and to what extent that Constitution has succeeded in helping the people in realising those aims and aspirations. From the point of view of our country it would be too premature to give an opinion on this point. But at the same time our Constitution tries to fulfil the aims and aspirations of the people of our country.

The *first* and foremost aim in a democracy is the STATE, that is, A RESPONSIBLE DEMOCRATIC STATE having Government by majority party and all forms of a responsible government. But democracy is more of the spirit rather than of form, and it is our duty to imbibe that spirit. We have got to believe in the freedom of the individual, cultivate respect for law and also accept that a large majority should carry on legislative activities and use its power with the active acquiescence of the majority of the people.

The *second* aim and aspiration that we have embodied in our Constitution is the establishment of a "secular state". We have equality of law, single citizenship, with all rights and obligations conferred on the people without any discrimination of race, colour, creed and caste.

The *third* aim and aspiration is the establishment of an independent judiciary, which has been entrusted with the noble task of protecting the rights given to the citizens under the Constitution. This is a striking departure from the English Constitution, for the Parliament in England can pass any Act and the Judiciary cannot pass a corrective. In our country the Constitution is supreme and sovereign and Parliament cannot encroach upon or touch the rights, much less the fundamental rights of the citizens and the provision of an independent judiciary has been made to carry into effect this aim and aspiration.

The *fourth* and the final aim and aspiration and perhaps the

most important is that our State should be a "WELFARE STATE". The Constitution has no doubt made ample provisions for legal justice, but ninety-nine per cent of the people do not go to the Courts for the establishment of this right. Far important is the social and economic justice, which our Constitution has provided in the form of Directive Principles. If these Principles are properly realised, in the form and spirit as they are intended to be realised, our country will certainly become a Welfare State based on principles of Socialism, in the true sense of the word. It is not possible to achieve these aims all at once, but it is no doubt true that the functioning of these democratic principles will depend on *how* and in what *manner* and *order* we select these 'Directives' and what *efforts* we put in to fulfil the principles laid down in those 'Directives'. Through our Constitution we must strive to give social and economic justice to the people. Today democracy itself is on trial and it can succeed if we can ensure social and economic justice to the people of this country. This justice will be the measure of success or failure of our Constitution. People have not yet realised their rights fully as well as the machinery to work these rights, but with the spread of education more and more people will try to do so and if our Constitution fails to establish social and economic justice it will fail entirely to evoke respect in the minds of the educated masses of this country.

It is not possible to frame a Constitution which can be theoretically and academically perfect. Our Constitution has worked very satisfactorily so far and it contains very healthy and hopeful elements which 'would enable this infant democracy to grow and flourish to its full height and stature. It has stood the test of 'partition and after', when disruptive tendencies were rampant in this country, and it has stood firm and has shown itself to be a very stable constitution, as good and true as other federal constitutions of the world. In the words of Prof. Ivor Jennings, "One must not exaggerate. The Constituent Assembly has given India a machine which ought to work. It is based upon the experience of a people who, whatever their other defects may be, do know how to govern themselves. In due course India will probably find, as the Irish did very quickly, that it is the machine and the background of public opinion which mat-

ter. The frills and furbelows of a Constitution are as unnecessary as those of fashions. What is more, like those of fashion they cost money. A constitutional lawyer who wants a simple, spartan Constitution is perhaps as disloyal to his profession as a sari designer who insists on plain georgette. He must confess, though, that a Constitution works best when it discourages constitutional lawyers from breeding." (*Some Characteristics of the Indian Constitution*).

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# UNIVERSITY QUESTIONS

**Note :** I have given here few important questions set at the Examinations of different Universities in the State of Bombay for the guidance of the students only. These questions have been printed here with the kind permission of the different Universities.

How does the Constitution of India achieve the idea of social, political and economic justice as set up in the preamble.

What are the provisions which try to establish a socially just society? [Please refer to the Epilogue].

Write a short note on Preamble of the Indian Constitution.

What are the salient features of the Indian Constitution?

It is said by Basu that the Indian Constitution is partly rigid, largely flexible. Do you accept this description of the Constitution? Give reasons for holding that the Indian Constitution is "largely flexible".

## Union and its Territory

Write short note on formation of a new State.

Discuss the provisions regarding the re-organisation of States in the Indian Constitution.

## Citizenship

State the provisions of the Constitution regarding acquisition, retention and loss of citizenship of India.

What are essentials for citizenship under the Indian Constitution?

Discuss the provisions of the Indian Constitution regarding citizenship.

A, who has migrated to India from Pakistan on the 29th July 1948, claims to be a citizen of India from the date of the commencement of the Constitution. Is his claim valid? State in details the rules governing the loss of citizenship of India.

## Fundamental Rights

What are fundamental rights guaranteed under the Constitution?

Discuss : Right to Equality under the Constitution.

Discuss in what manner "Right to Equality" is guaranteed under Indian Constitution.

What is 'discrimination'? State the provisions in the Constitu-

tion with regard to 'prohibition of discrimination on certain grounds.'

Write short note on abolition of titles.

How is the "Right to Freedom" guaranteed under the Indian Constitution?

Discuss the provisions in the Constitution forbidding retrospective criminal legislation and double punishments for the same offence.

"No person shall be deprived of his life or personal liberty except according to procedure established by law." Comment.

"Art. 22 of the Constitution makes provision for protection against arrest and detention in certain cases." Explain fully (a) the scope of and (b) the limitation of this protection.

Write short note on 'Right against exploitation'.

Discuss right to freedom of religion guaranteed under the constitution.

Discuss right to education guaranteed under the Constitution.

"No person shall be deprived of his property save by authority of law". Comment.

Discuss right to property guaranteed under the Constitution.

Explain the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Under what circumstances they are available.

Write short notes on : Certiorari and Prohibition.

Write short note on Prerogative writs.

Mention and briefly explain the various writs issuable under the Indian Constitution. Who may issue them?

What are the remedies for the enforcement of fundamental rights guaranteed under the Constitution?

Write short note on Quo Warranto.

### **Directive Principles**

Explain the directive principles of state policy.

State very briefly the scope and utility of the Directive Principles. Can they override the provision relating to the fundamental rights?

Explain the distinction between "Fundamental Rights and Directive Principles of state policy."



### The Union Executive

Discuss the position of the President in the Constitution.

Discuss the election, qualifications and duties of the President of India.

What qualifications are required for the office of the President?

"Though India is described as a 'sovereign democratic republic, it might also be described as a constitutional monarchy without a monarch."—Sir Ivor Jennings. Comment on the statement with reference to the powers and functions of the President.

State the provisions of the Indian Constitution on President's executive powers.

Discuss legislative powers of the President.

To what protection are the President, the Governors and the Rajpramukhs entitled to, in the matter of civil or criminal proceedings against them?

Write short note on Impeachment of President.

What are the powers and duties of the Vice-President of India.

Write short note on Vice-President.

Discuss the position of the Council of Ministers of the Union.

Give a summary of the provisions of the Constitution relating to the appointment, selection, and dismissal of the Prime Minister at the Centre and Chief Ministers in the states. Has the Constitution laid down the qualifications which a person must possess before being appointed to the office of a minister at the centre or in the class 'A' and 'B' States? If 'Yes', enumerate them.

Discuss the duties of the Prime Minister.

Write short note on Prime Minister.

Write short note on Attorney General of India.

### The Union Legislature

Write short note on the Speaker of the House of People.

What are the disqualifications for membership of Parliament? If a question arises as to whether a member has become subject any of the disqualifications how is the question solved?

What are the disqualifications of membership of Parliament?

Discuss the Privileges and immunities of Members of Parliament.

### **Legislative Procedure**

Explain the legislative procedure regarding Bills other than money Bills in Parliament.

Explain the legislative procedure relating to Bills in Parliament with special reference to Money Bills.

Explain the legislative procedure in Parliament with regard to money bills.

Give a brief account of the provisions in the Constitution with regard to 'assent' to bills passed by the Parliament and the State Legislatures.

State fully the legislative procedure in financial matters in Parliament of the Union of India.

Explain the procedure in financial matters in the Union of India.

Write short note on Annual Financial Statement.

Write short note on Appropriation.

### **The Union Judiciary**

Give a clear account of the constitution and functions of the Supreme Court of India.

What are the qualifications for appointment as a Judge of the Supreme Court? How is he appointed and how may he be removed.

Write short note on Ad Hoc Judges.

Write short note on the Court of Record.

Discuss the original jurisdiction of the Supreme Court.

Explain the appellate jurisdiction of the Supreme Court of India, in relation to civil and criminal matters.

State fully the powers of the Supreme Court in matters of appeal.

Write short note on consultative jurisdiction of Supreme Court.

Write short note on Advisory Jurisdiction of the Supreme Court.

### **Comptroller & Auditor-General of India**

Write short note on Comptroller and Auditor-General.

### **The Executive in Part 'A' States**

Explain briefly the Constitution of Executive in Part A States.

What is the procedure laid down in the Constitution for the appointment of Governor.

What are the legislative powers of Governor of State?

Write short note on power of the Governor to promulgate ordinances.

### **Council of Ministers**

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." In the light of this statement discuss the position of the Governor of r State in relation o his Council of Ministers.

Discuss the duties of the Chief Ministers of a State.

### **The State Legislature**

Write short note on Second Chamber in the States.

Write short note on abolition and creation of Legislative Councils.

### **The High Courts in the States**

What are the provisions regarding jurisdiction and powers of the High Courts.

Under the new Constitution what are the powers of the High Court in the State.

Discuss supervisory powers of High Courts over the Sub-ordinate Courts.

Explan. the powers of the High Courts, regarding superintendence and transfer of cases.

State the provisions about the power of superintendence which every High Court has over all courts and tribunals within its territorial jurisdiction. Is this power merely administrative or judicial also ?

State has the power of (a) appointment (b) removing from office the judges of High Court in part 'A' and 'B' States. What are the conditions of appointment and qualifications prescribed by the Constitution for the office of a Judge of High Court of a State.

What are the rules for appointment and removal of the office of Judges of High Court.

State the provisions regarding the appointment of Dist. Judges and other Subordinate Judges.

### **Advocate-General**

Write short note on the Advocate-General for the State.

### **Part 'B' and Part 'C' States**

Write short note on Raj Pramukh.

What are the Provisions of the Constitution regarding Constitutional status of the State of Jammu and Kashmir.

State the provisions of the Indian Constitution on President's powers with respect to 'C' States.

How are Part 'C' States governed?

### **Relations between the Union and the States**

Discuss the statement "a State Legislature in India is not a delegate of the Union Parliament". If you do or do not agree with this view give your reasons.

Explain the Legislative relations between the Union and the States.

Discuss the scheme of distribution of Legislative powers between Union and States. When can Parliament legislate in a matter in State List or for two or more states? What is the effect of inconsistency between laws made by Parliament and laws made by State Legislatures.

What are the legislative powers of Parliament with regard to matters relating to States?

Discuss the scheme of the distribution of legislative powers between Union and States. When can Parliament legislate in matter in State List?

Write short note on residuary powers of legislation.

What are the provisions with regard to inconsistency between laws made by Parliament and laws made by the legislatures of States.

Discuss :—Administrative relations between Union and States.

### **Co-ordination Between States**

Write short note on Inter-State Council.

### **Finance, Property, Contracts and Suits**

Write short note on Contingent fund.

How is distribution of revenues between Union and States made?

What are the provisions of the Constitution with regard to the appointment of a "Finance Commission" and the recommendations made by it.

Write short note on Finance Commission.

What are the duties and functions of the Finance Commission, Expln. the Constitution and function of the Finance Commission.

Write short note on borrowing powers of the Union and the States.

What are the provisions regarding contracts by Government and suits by or against Government under the Indian Constitution?

Write short note on Bona Vacantia.

Write short note on Escheat.

Write short note on Privy Purse.

Write short note on Estate Duty.

Write short note on Corporation tax.

### **Trade, Commerce and Intercourse Within India**

What are the restrictions as to imposition of tax by a State on the sale and purchase of goods under the Indian Constitution.

Give a brief account of the provisions of the Constitution with regard to (a) 'freedom of Inter State trade, commerce and intercourse' and (b) legislation giving effect to international agreements'.

### **Public Service Commission (Union & States)**

Explain the constitution and function of Public Service Commission.

What are the functions of the Public Service Commission.

Write short note on the Annual report of the Public Service Commission on the work done by them.

### **Elections**

Write short note on the functions of the Election Commission. Can Courts interfere in election matters?

Discuss constitution and functions of Election Commission.

Write short note on Election Commission.

### **Provisions Relating to Certain Classes**

Write short note on special provisions for the Anglo-Indian Community.

Write short note on Scheduled Castes.

### **Official Language**

Write short note on :—Official Language of the Union.

Discuss official language of the Union.

Discuss the Official Language of the Supreme Court and High Courts.

### **Emergency Provisions**

Discuss briefly the Emergency Provisions under the Constitution of India. How far do they affect the autonomy of the States ?

What are the emergency provisions under Indian Constitution.

Explan. the Proclamation of Emergency and its effects.

Discuss provisions regarding financial emergency.

What is the safeguard against the failure of constitutional machinery in the State ? Discuss the provisions in the State ?

Discuss the provisions in Constitution Act.

### **Amendment of the Constitution**

“The Indian Constitution lays down three different modes for amendment of different provisions of the Constitution.”

Explan. is any provision of the Constitution immune from constitutional amendment ?

Discuss provisions regarding amendment of the Constitution.

What is the procedure laid down for amendment of Constitution ?

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# **PART II**

## **THE CONSTITUTION OF INDIA**

**with**

**All Amendments upto December, 1957.**





## CHAPTER I

### PREAMBLE TO THE CONSTITUTION

#### Preamble: Provisions of the Constitution

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all.

FRATERNITY assuring the dignity of the individual and the unity of the Nation:

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

#### Constitutional Importance of Our Preamble

The aim of our Constitution has been clearly stated in the Preamble. It proclaims in the solemn and noble language the ideals set forth by the framers of our Constitution. It indicates the general purposes for which the people ordained and established the Constitution. But the Preamble cannot be regarded as a source of any substantial powers conferred on the government or any of its departments. The preamble merely states a purpose, but it is in no way a grant of jurisdiction. It does not follow that it has no constitutional significance. On the contrary, it pronounces the very spirit which led our framers to frame this document and it incorporates the very spirit which sustains it and the spirit which it breathes. "It is the very key to the understanding of our constitution".

In *Gopalan v. State of Madras*, it was argued that the

preamble should be the guiding star in the interpretation of the constitution and that the entire provisions of Part III (i.e. Fundamental Rights), must be construed as being paramount to legislative will. This very wide and unqualified interpretation was not accepted by the Supreme Court. In the words of Justice Das, "The glorious preamble to our Constitution proclaims the solemn resolve of the people of this country to secure to all citizens Justice, Social, Economic and Political and equality of status and of Opportunity. . . . The ideal we have set before us in Art. 31 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which economic and political justice shall inform all the institutions of National Life."—

The Preamble, therefore, is an important part of the Act for finding out connotations of the sections and a good means for finding out the meaning as it is the key to the understanding of our Constitution. In construing the provisions of the part III of our Constitution it is necessary that the higher purpose and the spirit of the preamble as well as the constitutional significance of declaration of fundamental rights should be borne in mind. But the language of the provisions should not be stretched too far for the purpose of proving a constitutional theory in disregard of the cardinal rule of interpretation of any enactment, constitutional or other. The spirit of the preamble should be collected primarily from the natural meaning of the words used.

### **Analysis of our Preamble**

An analysis of our Preamble shows that it is **unique and comprehensive in its content** and indicates many important aspects and envisages many important ends which the people have set out for the new born Republic. It indicates the **source** from which the constitution springs and from which it claims its sanction and sanctity.

The Preamble opens with the words, "**We the people of India**". The emphasis here is on the word '**people**', which means the sovereignty of the people. The presence of sovereignty is an attribute of every political society or State.

According to Prof. Dicey the ultimate sovereign in a State is not the legislature but the electorate which by its votes chooses Parliament, and delegates it with authority to make laws to govern the State. According to Sir John Salmond, sovereignty is divisible and is capable of being vested in different persons or bodies. This divisibility of sovereignty explains the theory of separation of powers in a Federal Constitution. Each branch exercises an absolute and uncontrolled power in its sphere of activity and each is sovereign in its respective sphere of activity. Even from our point of view the ultimate political sovereign is the people and that is why our Constitution specifically proclaims that aim in the Preamble. As Marshall C.J. points out in **McCulloch v. Maryland**, "the Government proceeds directly from the people, it is ordained and established in the name of the people. In form and substance it emanates from the people as they are granted by them and are to be exercised directly on them and for their benefit. It is Government of all and its power is delegated by all and it represents for all and acts for all."

The words "**sovereign democratic republic**" emphasise the independent nature of our State which is now sovereign both internally as well as externally. It also, emphasises the democratic character of our State i.e. it is a State in which the people have both a direct and an indirect share in the Government. Further, it is declared to be a **Republic** which means that it is a government where no one holds the public power as a proprietary right. All power is exercised for the common good of the inhabitants or subjects or free citizens at the same time the word emphasises the supreme power of the State residing in the body of the people.

It also seeks to establish, "**justice, social, economic and political**" which is to be secured to all citizens. The words liberty, equality and fraternity will always remain eternal words, and will always appeal to mankind. Our Constitution solemnly resolves to secure to all its citizens liberty of thought, expression, belief, faith and worship. It also assures equality of status, and opportunity and the promotion among all of

fraternity thus assuring the dignity of the individual and respect for this personality. The words, "**unity of the Nation**" signify the object of the Constitution which is the unity of the country as a whole, thus declaring India as one single unified Nation and not a number of States.

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## CHAPTER II

### THE UNION AND ITS TERRITORY

#### Provisions of the Constitution

1. (1) India, that is Bharat, shall be a Union of States.  
(2) The States and the territories thereof shall be as specified in the First Schedule.  
(3) The territory of India shall comprise—
  - (a) the territories of the States.
  - (b) the Union territories specified in the First Schedule; and
  - (c) such other territories as may be acquired.
2. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.
3. Parliament may by law—
  - (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
  - (b) increase the area of any State;
  - (c) diminish the area of any State,
  - (d) alter the boundaries of any State;
  - (e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired,

**Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters**

4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

**Union and its Territories—Constitutional Significance**

Before the Reorganisation Act of 1956, India was divided into three distinct categories of States under Parts A, B and C. States in Part A were units which were former British Indian Provinces, States in Part B were formerly Native States governed by Indian Princes and Chiefs, while Part C states comprised of units from territories under British India and Indian Princes. The Part D covered the areas of Andaman and Nicobar Islands and they were merely called territories of the Union of India. Jammu and Kashmir was specified as Part B State and formed part of the Indian Union according to Art. 1. But by a special Art. 370 it has now been placed on a special footing. The power of the Parliament to make laws for the said State was limited to matters specified therein, the President was given the power, with the recommendation of the Constituent Assembly of that State, to declare whether the article was to be operative or to what extent it was to be operative. The Constituent Assembly of Kashmir has now adopted a new Constitution for the territory of Jammu and Kashmir. Thus the old classification which was adopted out of political necessity was found to be quite expensive. With the passing of the States' Reorganisation Act of 1956, read with the

Adaptation of Laws Order I of 1956 and the Constitution Seventh Amendment Act of 1956, all the territories have now been reconstituted.

Under Art. 3 Parliament has power for forming new or changing the territories of the existing States. It can form a new State by separation of territory or by uniting two or more States or parts of States or by uniting any territory to be part of any State; increase the area of a State or diminish the area, alter the boundaries or name of any State. Under the provisions of this article the Andhra State Act of 1953, was passed for forming a new State within the then existing State of Madras. It was also under the same article that a Commission for the reorganisation of States was established.

The Constitution Seventh Amendment Act has made very significant changes in the structure of the Indian Union. The old classification of Part A, B and C completely disappears and we have now 14 States and 6 Union Territories, as are specified in the First Schedule (see p. ) Sovereignty of the Indian Union extends not merely over the territories mentioned in the First Schedule but also over **territorial waters**. The President of India by a proclamation dated 23rd March, 1956, declared that the territorial waters of India extend into the sea to a distance of six nautical miles measured from the **appropriate** base line.

Arts. 2 and 3 of the Constitution provide for the admission or establishment of new States and the formation of new States and alteration of areas, boundaries or names of existing States. But it also lays down that such a change cannot be made without the recommendation of the President and without obtaining the consent of the respective States. The procedure laid down in Art. 368 must be followed whenever there is the question of the creation or admission of a new State. Art. 3 lays down the procedure for the exercise of this power. There is a difference between the American and the Indian procedure in the sense that the American Constitution maintains the integrity of the States in the federal system and lays down that the **Federal**



**Legislature alone cannot re-draw the political map of the country.** But under the Indian constitution it is provided that only those States which are affected in the new set up should be consulted before making any change in their boundaries. The views of the Legislatures of the State or States affected must be obtained but the President is not bound to abide by such views. In order to quicken the procedure, the Constitution Fifth Amendment Act, 1955 was passed and the proviso to Art. 3 was accordingly amended, thus enabling the President to fix a time limit within which States' Legislatures may be required to communicate their views on the Bill for the reorganisation of States to the President, as there was a possibility of a State indulging in delaying tactics and thus postponing the reorganisation almost indefinitely.

## FIRST SCHEDULE

### (Articles 1 and 4)

#### I. THE STATES

<i>Name</i>	<i>Territories</i>
1. Andhra Pradesh ..	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953 and the territories specified in sub-section (1) of section 3 of the States Reorganisation Act, 1956.
2. Assam .. ..	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951.
3. Bihar .. ..	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.

<i>Name</i>	<i>Extent</i>
4. Bombay .. ..	The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956.
5. Kerala .. ..	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh ..	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956.
7. Madras ..*	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956.
8. Mysore .. ..	The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956.
9. Orissa .. ..	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
10. Punjab .. ..	The territories specified in section 11 of the States Reorganisation Act, 1956.
11. Rajasthan .. ..	The territories specified in section 10 of the States Reorganisation Act, 1956.
12. Uttar Pradesh ..	The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province.
13. West Bengal .. ..	The territories which immediately before the commencement of this Constitution were either comprised in the Province of West

<i>Name</i>	<i>Extent</i>
	Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954 and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
14. Jammu and Kashmir .. Kashmir.	The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.

## II. THE UNION TERRITORIES

1. Delhi .. .. The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.
2. Himachal Pradesh .. The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur.
3. Manipur .. .. The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.
4. Tripura .. .. The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
5. The Andaman and Nicobar Islands. The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Andaman and Nicobar Islands.
6. The Laccadive, Minicoy and Amindiv Islands. The territory specified in section 6 of the States Reorganisation Act, 1956.

## CHAPTER III

### CITIZENSHIP

#### *Provisions of the Constitution*

#### **Citizenship at the commencement of the Constitution**

5. At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

#### **Rights of citizenship of certain persons who have migrated to India from Pakistan.**

6. Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or  
(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on

an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

#### **Rights of citizenship of certain migrants to Pakistan.**

7. Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

#### **Rights of citizenship of certain persons of Indian origin residing outside India.**

8. Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India,

**Persons voluntarily acquiring citizenship of a foreign State not to be citizens.**

9. No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

**Continuance of the rights of citizenship.**

10. Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

**Parliament to regulate the right of citizenship by law.**

11. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

**Constitutional importance of the Provisions on citizenship.**

Our Constitution in Arts. 5-11 does **not** lay down detailed provisions for the acquiring and termination of Indian citizenship but Parliament under the power given to it has now passed the Citizenship Act (Act 57) of 1955.

The Indian Constitution, **unlike** other Federal Constitutions recognises only one type of citizenship for the whole of India. There is nothing like a double citizenship as is prevalent in America. Benefitting from the experiences of the United States in this direction we have adopted the principle of single citizenship which is intended to arrest the delerious effects of double or dual allegiance.

Under the provisions of Arts. 5-11 some are born citizens, while some acquire citizenship. Citizenship carries with it various rights and obligations which only belong to the citizens of that country. The most important aspect of citizenship is that every citizen owes allegiance to **his** State and the State owes a duty to protect the life, liberty and the property of its citizens. Citizens are members of a political community who submit themselves to the dominion of Government for the promotion of general welfare and also their individual rights. Our constitution only defines the

group of persons who will be or will be deemed to be citizens of India **at the commencement of the Constitution.** The Indian Citizenship Act has made provisions for **future citizenship** as also for the **termination of citizenship.**

Under the Indian Citizenship Act, 1955, there are five distinct modes of acquiring Indian citizenship, viz. (1) **citizenship by birth**; (2) **by descent**; (3) **by registration**; (4) **by nationalisation** and (5) **by incorporation of territory.**

**1. Citizenship by Birth.** Every person born in India on or after 26th January, 1950 shall be a citizen of India by birth. But if at the time of his birth his father possessed such immunities from suits and legal process, as is given to an envoy or foreign sovereign or any person who is accredited to the President of India and he is not a citizen of India, or his father is an enemy abroad and the birth occurs in a place when under occupation by the enemy he shall **not** be deemed to be a citizen by virtue of his mere birth in India at that time.

**2. Citizenship by Descent:** A person who is born outside India on or after 26th January, 1950 shall be a citizen of India at the time of his birth. But if the father of such a person was a citizen of India by descent only that person shall **not** be a citizen of India by birth as above **unless** his birth has been registered at the Indian Consulate within one year of his birth or the commencement of this Act, whichever is later or with the permission of the Central Government after that period or unless his father is at the time of his birth in the service of the Government of India. Any person born outside undivided India who was or was deemed to be a citizen of India at the commencement of the Constitution shall also be deemed to be a citizen of India by descent only.

**3. Citizenship by Registration:** Subject to restrictions and conditions that may be prescribed, the appropriate authority may register a person who is not already such a citizen by virtue of any other provisions of the Citizenship Act as a citizen of India on application made by such a person who is not already a citizen. Such a person must belong to one

of the following categories:

- (a) persons of Indian origin who are ordinarily resident in India and have been so resident for 6 months immediately before making an application for registration,
- (b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India,
- (c) women who are or have been married to citizens of India;
- (d) minor children of persons who are Indian citizens; and
- (e) persons of full age and capacity who are citizens of one of the countries of the Commonwealth, viz. U.K., Canada, Australia, New Zealand, South Africa, Pakistan, Ceylon, Rhodesia and Ireland. But such persons of full age must take the oath of allegiance before registration.

Persons who have been removed from or deprived of Indian citizenship or whose citizenship has been terminated shall not be registered without the order of the Central Government.

**4. Citizenship by Naturalisation:** A person can apply for grant of naturalisation if he is of full age and capacity. He should not belong to the countries specified in the Schedule. He must also satisfy the following conditions:—

- (a) he should not be a subject or citizen of a country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;
- (b) he should have renounced his citizenship of his previous country and notified such renunciation to the Central Government;
- (c) he should be residing in India or should be in the service of the Government of India or partly one or the other for a full period of twelve



months immediately preceding the date of the application;

- (d) during the period of seven years immediately preceding the above period of twelve months, he should have resided in India or should have been in service of Government of India or partly in one or the other for a period of four years in the aggregate;
- (e) he should be of good character;
- (f) he should have adequate knowledge of a language specified in the Seventh Schedule to the Constitution; and
- (g) he should intend to reside in India or enter into or continue in Government service or serve an International Organisation of which India is a member or under a society, company or body of persons established in India.

Even if a person does not comply with all or any of the above conditions he can still acquire citizenship by naturalisation if in the opinion of Central Government he has rendered distinguished service to the cause of science, philosophy, art, literature, world peace, or human progress in general.

**5. Citizenship by Incorporation of Territory:** If a territory becomes a part of India, the Central Government may by notification specify who shall be citizen of India by reason of such incorporation.

#### **Termination and deprivation of Citizenship**

By virtue of Sec. 9 of the Citizenship Act, if a person voluntarily acquires citizenship of another country, he ceases to be a citizen of India. This section is analogous to Art. 9 of the Constitution which says that no person shall be a citizen of India by virtue of Art. 5, or be deemed to be a citizen of India by virtue of Art. 6 or Art. 8, if he has voluntarily acquired the citizenship of any foreign State.

The Central Government may also deprive a person of Indian citizenship for grounds mentioned in Sec. 10 of the Act after making due inquiry in the matter.

## CHAPTER IV

### FUNDAMENTAL RIGHTS

#### General Provisions regarding Fundamental Rights

12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

**Laws inconsistent with or in derogation of the fundamental rights.**

13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Some Constitutions have made no declaration of fundamental rights as they are embodied in our Constitution for these rights are only secured by the decisions of the Courts

extended or conferred by the **habeas corpus act**. The Courts in all countries have the inherent power of protecting the individual against the tyranny of the Executive, but quite often they are powerless against legislative despotism.

The incorporation of fundamental rights in a constitution is for the purpose of preserving certain fundamental human rights which are not only protected by the State but in which the State has perhaps no right to interfere. The purpose of such rights is "to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech and free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote. They depend on the outcome of no elections." (Justice Jackson).

Our Supreme Court Judges in their different decisions have explained the nature of fundamental rights with almost equal force and clarity as some of the American Judges. Kania C. J. in **Gopalan v. the State of Madras** has pointed out, "Fundamental rights are express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation." Mahajan J. in **Bohman Behram v. the State of Bombay**, "These fundamental rights have not been put in the constitution merely for individual benefit, though ultimately they come into question in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver has no application to provisions of law which have been embodied as a matter of constitutional policy."

Unlike the American Constitution, these provisions are very detailed and some of the peculiarities necessitated by special social, economic and political conditions and circumstances have been incorporated in Part III of our constitution. Further, the right to move the Supreme Court for the enforcement of fundamental rights is in itself a fundamental right, that is, Art. 32 is itself a fundamental right granted to the

citizens for the enforcement of the fundamental rights—a provision not to be found in the American Constitution. These rights are the vital features of our Indian Democratic Republic, based on the ideals proclaimed in the Preamble. Any existing law or any future law which is inconsistent with these fundamental rights would be void to the extent of that inconsistency. Moreover, fundamental rights are applicable to all citizens and groups without any discrimination for the Advisory Committee on fundamental rights significantly observed that fundamental rights of the citizens of the Union would have no value if they differed from group to group or unit to unit or were not uniformly enforceable. But Parliament has power to amend any of these rights by special procedure prescribed under Art. 368 and also when there is an emergency the operation of these fundamental rights can be suspended by the President. Some of the fundamental rights are guaranteed to the Indian citizens only, while others are guaranteed to every one residing in the territory of India, e.g. freedom of expression, freedom of association and of movement are guaranteed to citizens, while those relating to protection of life, liberty and property are guaranteed to all persons in the territory of India, i.e. Arts. 16, 19, 29 and 30 are limited to citizens while the remaining articles in Part III are applicable to citizens and aliens alike.

Under Art. 12, the expression "State" has been given a very wide connotation with respect to the fundamental rights and is defined to include:—

- (1) the Government and Parliament of India,
- (2) the Government and the Legislature of each of the States,
- (3) all local authorities, and
- (4) other authorities within the territory of India or under the control of the Government of India.

From this it follows that fundamental rights would not only bind the actions of the Central and the State Legislatures, but even of the authorities or tribunals including Municipalities, District Boards, Port-Trusts and Panchayats. The benefits of the fundamental rights are extended even outside

the territory of India which is under the control of Government of India for the time being. Therefore, if mandatory and trust territories are placed under the control of the Government of India by the U.N.O., the people of those territories would also get the benefit of our fundamental rights. This proves that the framers of the Constitution had no intention to discriminate between Indian nationals and the people belonging to other countries who were for the time being under the control and administration of India. The Madras High Court has, however, held that Universities cannot be regarded as the proper authorities which can exercise governmental functions. This would also exclude natural or juristic persons who are not regarded as instrumentalities of the government. Any other institution maintained by the State will not also come within the purview of Arts. 12 and 15(1).

### Article 13

Art. 13 declares that all laws, customs and usages which are inconsistent with the Constitution are void. Bad practices and usages die very slowly, but here they are just made void. It is felt that the construction upon this article by the Supreme Court in **Keshavan Madhavan v. State of Bombay, A.I.R. 1951**, falls short of the true meaning of Art. 13. In this connection, Das J. in the same case has pointed out, "As the fundamental rights became operative only on and from the date of the Constitution, the question of inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being. It must follow that **Art. 13(i) can have no retrospective effect but is wholly prospective in its operation.** It should also be noted that article 13(i) does not in turn make the existing laws which are inconsistent with the fundamental rights void *ab initio* or for all purposes. They are void only to the extent they come into conflict with the fundamental rights. In other words, on and after the commencement of the constitution, no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing

law is limited to the future exercise of the fundamental rights."

Further, Art. 13(i) cannot also be read as obliterating the entire operation of inconsistent laws, or to wipe them out altogether from the Statute Book, for to do so would be to give them retrospective effect, which as we have said above, they do not possess. Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the constitution."

**Thus according to the Supreme Court art. 13 is prospective and not retrospective.** The constitution has no retrospective operation to invalidate that part of the proceeding that has already been gone through, but the constitution does not permit the special procedure to stand in the way of exercise or enjoyment of post-constitutional rights and must, therefore, strike down the discriminatory procedure if it is sought to be adopted after the constitution came into operation.

In the same Art. the word 'law' must be taken to mean rules or regulations etc. made in the exercise of ordinary legislative power and not amendments to the constitution made in the exercise of constituent power. With regard to questions whether a bye-law of a co-operative society, Industrial Award, or **Rules of Admission of Students in a particular college** are laws as defined in Art. 13(3), it was held that all these **cannot** be considered as 'law' in the sense as it is understood in Art. 13.

## PARTICULAR RIGHTS

### Provisions of the Constitution

#### 1. RIGHT TO EQUALITY

##### Equality before law.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**

**15.** (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

### **Equality of opportunity in matters of public employment.**

**16.** (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory) prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in

the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

### **Abolition of Untouchability.**

17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

### **Abolition of titles.**

18. (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

**N. B.:** For the Constitutional significance of the fundamental right to equality please refer to pp. 22-23 above.

## **2. RIGHT TO FREEDOM**

### **Protection of certain rights regarding freedom of speech, etc.**

19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;



- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect

the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

**N.B.:** For a very detailed discussion on the constitutional significance of Art. 19 please refer to pp. 23-31

**Protection in respect of conviction for offences.**

**20.** (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

**Protection of life and personal liberty.**

**21.** No person shall be deprived of his life or personal liberty except according to procedure established by law.

**N. B.:** Please refer to pp. 31-33 above for a detailed discussion of Art. 21.

**Protection against arrest and detention in certain cases.**

**22.** (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in

custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

**Suspension of provisions of article 19 during emergencies.**

**22a.** While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

**N. B.:** For the Constitutional significance of Art. 22 please refer to pp. 33-39 above.

### **3. Right against Exploitation**

**Prohibition of traffic in human beings and forced labour.**

**23.** (1) Traffic in human beings and **begar** and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimina-

tion on grounds only of religion, race, caste or class or any of them.

**Prohibition of employment of children in factories, etc.**

24. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

**4. Right to Freedom of Religion**

**Freedom of conscience and free profession, practice and propagation of religion.**

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

**Explanation I.**—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

**Explanation II.**—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**Freedom to manage religious affairs.**

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

**Freedom as to payment of taxes for promotion of any particular religion.** .....

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

**Freedom as to attendance at religious instruction or religious worship in certain educational institutions.**

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

**N. B.:** For the Constitutional significance of Arts. 25-28 please see pp. 39-42 above.

**5. Cultural and Educational Rights**

**Protection of interests of minorities.**

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**Right of minorities to establish and administer educational institutions.**

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**N. B.:** Please refer pp. 42-44 above.

## **6. RIGHT TO PROPERTY**

**Compulsory acquisition of property.**

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.



(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

**Saving of laws providing for acquisition of estates etc.**

**31A.** (1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or



- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,—

- (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any **jagir**, **inam** or **muafi** or other similar grant and in the States of Madras and Kerala, any **janmam** right;
- (b) the expression "rights," in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder

**raiyat, under-raiyat<sup>1</sup>** or other intermediary and any rights or privileges in respect of land revenue.

### **Validation of certain Acts and Regulations.**

**31B.** Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

**N. B. For Constitutional Significance of Arts. 31, 31-A, 31-B please refer to pp. 44 to 54 above.**

## **RIGHT TO CONSTITUTIONAL REMEDIES**

### **Remedies for enforcement of rights.**

**32.** (1) The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of **habeas corpus**, **mandamus**, prohibition, **quo warranto** and **certiorari**, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

**Power to Parliament to modify the rights conferred by this Part in their application to forces.**

33. Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

**Suspension of the enforcement of the rights during emergencies.**

359. (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

**N. B. For Constitutional significance of Art. 32 please refer to a detailed discussion on pp. 54 to 60.**

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## CHAPTER V

### DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy as embodied in our constitution are the basic principles from the point of view of the social and economic order which the framers envisaged that India should attain. These principles have been borrowed from the Constitution of Eire. They are the signposts both for the Legislature and the Executive Authorities not only in executing laws but in enacting fresh legislation. It is a manifesto, an instrument of instructions, a code of moral precepts for the guidance of the Legislatures and the Executive. **They confer no legal rights and create no legal remedies. They constitute a charter for India's development as a Welfare State.**

According to Prof. Wheare, the inclusion of these principles is a mere political manifesto without any legal sanction for it is definitely provided that they are not justiciable i.e. not enforceable in any court of law, but at the same time they are declared as fundamental from the point of governance of the country. By the word fundamental is meant 'guiding principles' not only for agencies responsible for the government of the country but also for the judiciary while construing the laws and interpreting them in cases brought before them. Hence the Supreme Court has correctly observed in the **State of Madras v. Champakam Dorairajan**, "That the Directive Principles of State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights. . . . So long as there is no infringement of any Fundamental Rights, to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the directive principles as set out in Part IV but subject again to the legislative and executive powers and limitations conferred on the States under different provisions of the Constitution."

In the same case, the Supreme Court has held that

Art. 46 being only a directive principle of State policy, cannot whittle down the fundamental right declared in Art. 29(2). As a result of this decision the First Amendment Act 1951, amplified the provisions of Art. 15(3) by providing that nothing in Cl. 2 of Art. 29 shall prevent the State from making special provisions for the advancement of any socially and educationally backward classes of citizens or Scheduled Castes and the Scheduled Tribes. This amendment was introduced because Art. 46 laid down that the State should promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and exploitation.

In the **State of Bombay v. F. N. Balsara**, the Supreme Court expressed the view that in judging the reasonableness of the restrictions in any Act one has to bear in mind the Directive Principles of State Policy. Hence, inclusion of these Principles in our Constitution is not a mere political manifesto as Prof. Wheare makes it out. These Principles are comprehensive and propose to establish political, social and economic programme of a modern and democratic welfare State, in keeping with the ideals set out in the Preamble. They are not mere moral declarations or directions but Constitutional Directives.

### **Proposed Amendment of Art. 37**

A Bill has been introduced in the Lok Sabha for amending Art. 37, giving power to the courts to declare any order or law void if such an order or law violates the Directive Principles as embodied in our constitution. According to the statement of objects and reasons to the Bill, "The constitution adopted the directive principles as **guiding principles** for the governance of the state and making the laws: for specific reason the makers of the constitution did not make them enforceable by the court as fundamental laws. However, after six years of working of our constitution, it is now time for the citizens of free India to expect that the states are governed and the laws made according to the principles embodied in Part IV of the constitution apart from the fundamental rights."

The proposed amendment, if passed, will be incorporated in Art. 37 as follows:—

“37(2) Notwithstanding anything contained in clause (1), if in the opinion of any court any executive action or order of the Government of any State or any laws made by the States violate the principles of this chapter, such orders or laws, as the case may be, shall be declared void by such court.”

**Constitutional effects of the amendment:** The amendment, if passed, will have a very far reaching effect and may even create very difficult and complicated problems for the courts, as well as the government. Some of the principles enumerated in Chapter IV are quite vague and if the courts are called upon to scrutinise the laws of the States and the executive action, every Act or law will then be open to various interpretations and this may perhaps invalidate the whole structure of laws in force in this country. Further complication is likely to be created in deciding an issue in which there is a conflict between the Directive Principles and the Fundamental Rights. The question then would be: which is to prevail? The remedy for this is to add some of the main principles embodied in the Chapter on Directive Principles into the Chapter on Fundamental Rights.

### **PROVISIONS OF THE CONSTITUTION REGARDING DIRECTIVE PRINCIPLES**

#### **Definition.**

36. In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

#### **Application of the principles contained in this Part.**

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

**State to secure a social order for the promotion of welfare of the people.** .....

**38.** The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

**Certain principles of policy to be followed by the State.**

**39.** The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to age and strength;
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment.

**Organisation of village panchayats.**

**40.** The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

**Right to work, to education and to public assistance in certain cases.**

**41.** The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**Provision for just and humane conditions of work and maternity relief.**

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

**Living wage, etc., for workers.**

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**Uniform civil code for the citizens.**

44. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

**Provision for free and compulsory education for children.**

45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

**Organisation of agriculture and animal husbandry.**

48. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving



the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

**Separation of judiciary from executive.**

50. The State shall take steps to separate the judiciary from the executive in the public services of the State.

**Promotion of international peace and security.**

51. The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

**N. B.:** For further discussion please refer to pp. 61-62 above.

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## CHAPTER VI

### THE UNION EXECUTIVE

The executive in the Constitution may be of **two types** --- **Presidential and Parliamentary.**

In the presidential form, the executive is **constitutionally** independent of the Legislature and is not responsible to it for his acts. He is the real executive and not a mere rubber-stamp. As opposed to this is the Parliamentary executive or the Cabinet form of government, the Cabinet is a part of Parliament itself. The executive-head is a mere figure-head because the real executive power is exercised by the cabinet. The cabinet has been described as "a hyphen which joins, a buckle which fastens the legislative part of the State with the executive." The cabinet system first evolved under the British Constitution and its existence is based on conventions. No act of Parliament has so far authorised its formation, inspite of this it is the driving force in the English constitutional system.

**N. B.** For further discussion please refer to pp. 63 to 88 above.

#### **The President and Vice-President**

#### **The President of India.**

**52.** There shall be a President of India.  
**Executive power of the Union.**

**53.** (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any

- functions conferred by any existing law on the Government of any State or other authority; or
- (b) prevent Parliament from conferring by law functions on authorities other than the President.

### **Extent of executive power of the Union.**

**73.** (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

### **Conduct of Government Business.**

**77.** (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

### **Term of office of President.**

**56.** (1) The President shall hold office for a term of five years from the date on which he enters upon his office::

Provided that—

- (a) the President may, by writing under his hand

addressed to the Vice-President, resign his office;

- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

#### **Eligibility for re-election.**

57. A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

#### **Oath or affirmation by the President.**

60. Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

“I, A. B., do swear in the name of God  
solemnly affirm  
that I will faithfully execute the office of  
President (or discharge the functions of

77. (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

#### **Election of President.**

54. The President shall be elected by the members of an electoral college consisting of—

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.

**Manner of election of President.**

55. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

**Explanation.**—In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

**Qualifications for election as President.**

**58.** (1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**Conditions of President's office.**

**59.** (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

**Matters relating to or connected with the election of a President or Vice-President.**

**71.** (1) All doubts and disputes arising out of or in

connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

### **POWERS OF THE PRESIDENT (Arts. 3, 53(2), 72-78, 85-87, 392)**

No bill for the purpose of the formation of a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, or increase or diminish or alter the boundaries or the name of any State, shall be introduced in either House of Parliament except on the recommendation of the President. (Art. 3).

The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

The supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

Parliament has the power of conferring by law functions on authorities other than the President and the functions conferred by any existing law on the Government of any State or other authority shall not be transferred to the President.

**72.** (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

### **The Executive Powers of the President**

#### **Council of Ministers to aid and advise President.**

74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

#### **Other provisions as to Ministers.**

75. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.



76. (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

77. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

124. (1) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

148. (1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

#### **Appointment of Governor.**

155. The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

**Appointment and conditions of the office of a Judge of a High Court.**

**217.** (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty years:

Provided that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
- (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

**263.** If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

280. (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(c) any other matter referred to the Commission by the President in the interest of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

281. The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

299. (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be

personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

**316.** (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State.

**324.** (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

**Special Officer for Scheduled Castes, Scheduled Tribes, etc.**

**338.** (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

**344.** (1) The President shall, at the expiration of five years from the commencement of this Constitution and there-

after at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

### **Legislative Powers of the President**

Arts. 3, 85-87, 112, 115, 117, 123, 151, 247 & 338.

### **Sessions of Parliament, prorogation and dissolution.**

85. (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

(a) prorogue the Houses or either House;

(b) dissolve the House of the People.

### **Right of President to address and send messages to Houses.**

86. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

### **Special address by the President.**

87. (1) At the commencement of (the first session after each general election to the House of the People and at the commencement of the first session of each year) the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

### Procedure in Financial Matters

#### Annual financial statement.

112. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement."

115. (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

115 (2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

117. (1) A Bill or amendment making provision

of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

### **Power of President to promulgate Ordinances during recess of Parliament.**

**123.** (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and



(b) may be withdrawn at any time by the President.

**Explanation.**—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

**151.** (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

**Special Officer for Scheduled Castes, Scheduled Tribes, etc.**

**338.** (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

**Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.**

**339.** (1) The President may at any time and shall, at the expiration of ten years from the commencement of



this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

### **President's Privileges (Art. 361)**

#### **Protection of President and Governors.**

**361.** (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(33) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may

be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

### **Impeachment of President [Arts. 61 and 361(1)]**

#### **Procedure for impeachment of the President.**

**61.** (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

#### **Protection of President.**

**361.** (1) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring ap-

propriate proceedings against the Government of India or the Government of a State.

61. (4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

### **The Vice-President of India (Arts. 63-71)**

#### **The Vice-President of India.**

63. There shall be a Vice-President of India.  
**The Vice-President to be ex-officio Chairman of the Council of States.**

64. The Vice-President shall be **ex-officio** Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

#### **Term of office of Vice-President.**

67. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

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- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen

days's notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

### **Election of Vice-President.**

66. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of said Governments.

**Explanation.**—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

**Matters relating to or connected with the election of a President or Vice-President.**

71. (1) All doubts and disputes arising out of or in

connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration,

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

**Vice-President's Oath and term of office (Arts. 69, 67 & 68)**

69. Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

“I, A. B., do swear in the name of God  
solemnly affirm  
that I will bear true faith and allegiance to  
the Constitution of India as by law estab-  
lished and that I will faithfully discharge  
the duty upon which I am about to enter.”

67. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:  
Provided that—

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the

until his successor enters upon his office.

**68.** (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

### **The Council of Ministers (Arts. 74-75-78 & Sch. III)**

#### **Council of Ministers to aid and advise President.**

**74.** (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

#### **Other provisions as to Ministers.**

**75.** (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine

and, until Parliament so determines, shall be as specified in the Second Schedule.

**The Prime Minister (Arts. 75(1), 75(2) and 78)**

**75.** (1) The Prime Minister shall be appointed by the President and other Ministers shall be appointed by President on the advice of the Prime Minister.

(2) The Prime Minister shall hold office during the pleasure of the President.

**Duties of the Prime Minister.**

**78.** It shall be the duty of the Prime Minister—

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for the legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

**The Attorney-General for India**

(Arts. 76(1), 124, 76(4), 76(2)(3) & 88)

**Attorney-General for India.**

**76.** (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

**His Qualifications.**

**124.** (3) The qualifications of the Attorney-General of India are the same as those of a Supreme Court Judge as laid down in Art. 123(3), namely;—

A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—



- (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is, in the opinion of the President, a distinguished jurist.

76. (4) He shall hold office during the pleasure of the President, and\* shall receive such remuneration as the President may determine.

#### **His duties.**

76. (2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

#### **His rights.**

76. (3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

#### **Rights of Ministers and Attorney-General as respects Houses.**

88. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

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## CHAPTER VII

### THE UNION LEGISLATURE

The Legislature in any country enjoys a very predominant position in the day to day working and administration of that country. We are now living in an age in which laws have gained tremendous influence and the laws promulgated by the States have come to guide and direct almost all the activities of the people. One of the most important functions of the legislature in any country is the making of laws, though this is not the only function that Parliament performs. President Wilson correctly pointed out the significance of the modern Legislature when he said, "It is the forum of the nation. It is quite important as legislation keeps a vigilant sight over the administration; but even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which keeps all national concerns suffused in a broad day light of discussion."

Under our Constitution we have chosen a parliamentary form of government as is prevalent in England. We have affected a harmonious blending of the executive and the legislative organs of the State. The executive power is wielded by a body which is a part of the legislature and belong to the party which has a majority in the popular chamber. The Parliament, therefore, provides the cabinet and holds the cabinet responsible to it. By discussion and criticism the policy formulated by the cabinet comes under severe scrutiny of the members of the Legislature, bringing to light the merits and demerits of the policy of Government. In England, the opposition party which has been legally and officially recognised by the Minister of the Crown Act, performs a very important function. In India, the leader of the opposition, as in England, has no special salary. As a matter of fact the multiple parties prevailing in the different legislatures in India make the formation of a healthy opposition almost impossible.

Although we have adopted a parliamentary form of government, and the Parliament is supreme under the constitution, it is not as supreme as the British Parliament. By Parliamentary Sovereignty in England we mean that Parliament can make or unmake **any law whatever** and whenever, whether fundamental or otherwise, like any other law. It has both legislative and constituent powers. Secondly, the Judiciary cannot set aside or nullify the Act of Parliament. The question of constitutionality does not arise in respect of a Sovereign body like the British Parliament.

PARLIAMENT (RAJYA SABHA) [ARTS. 80,

83(1), 84, 89 & 92]

**Provisions of the Constitution**

**80.** The Council of States shall consist of (a) 12 members to be nominated by the President consisting of persons having special knowledge or practical experience in respect of Literature, science, art and social service, and (b) not more than 238 representatives of the States and of the Union Territories.

There is no election for the Council of States but they shall be elected by the elected members of the Legislative Assemblies of the States in accordance with the system of proportional representation by means of a single transferable vote.

**83.** Council of States shall not be subject to dissolution but as nearly as possible one third of the members thereof shall retire on the expiration of every second year. The object of the article is to prevent the House from being turned into a stale body and to have into it a continual flow of fresh talents. It is a permanent body and not subject to dissolution.

**84.** A person shall not be qualified to be chosen to fill in a seat in the Council of States unless he is a citizen of India; is not less than 25 years of age and possesses such other qualifications as Parliament may prescribe by law.

OFFICERS OF RAJYA SABHA [ARTS. 89-92]

**89.** The Vice-President of India shall be **ex-officio**

Chairman of the Council of States, which shall also choose its Dy. Chairman, who shall vacate his office if he ceases to be a Member of the Council. In the absence of the Chairman, the Dy. Chairman may perform all his functions and duties (Art. 91). He may, by writing under his hand addressed to the Chairman resign his office or he may be removed from his office by a resolution passed by a majority of all the then members of the Council (Art. 90). The Chairman or the Dy. Chairman cannot preside while a resolution for his removal from office is under consideration of the House (Art. 92). The Chairman shall have the right to speak in and otherwise to take part in the proceedings, of the Council of States while any resolution for his removal is under consideration, but shall not be entitled to vote at all on such resolutions or any other matter during such proceedings [Art. 92(2)].

THE HOUSE OF THE PEOPLE [ARTS. 81-84,  
93-96, 100, 112, 330-341]

81. The House of the People, known as the 'Lower House' shall consist of not more than 500 members chosen by direct election from territorial constituencies in the States and not more than 20 members to represent the Union Territories chosen in the manner prescribed by Parliament. The constituencies are to be territorial and the election is to be on the basis of adult suffrage i.e. every citizen who is not less than 21 years of age and is not otherwise disqualified on the ground of non-resident, unsoundness of mind, crime or corrupt or illegal practice is entitled to be a voter. Each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is so far as practicable, the same throughout the State.

**Duration:** The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the period of five years shall operate as a dissolution of the House. The said period may, while a Proclamation of Emergency is in operation, be extended by Parliament for one year.

**330.** Seats shall be reserved in the House of the People for Schedule Castes; Schedule Tribes. The President, may if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House (Art. 331). But such a reservation of seats for the above-mentioned classes shall cease after a period of ten years (Art. 334).

**Qualification for its membership:** A person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India, is not less than 25 years of age; and possesses such other qualifications as Parliament may prescribe by law (Art. 54).

**Speaker and Dy. Speaker:** (Arts. 93-96).

**93.** The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Dy. Speaker thereof.

**94.** Either of them shall vacate his office if he ceases to be a member of the House or he may at any time by writing under his hand address, if such member is the Speaker, to the Dy. Speaker, (and if such member is the Dy. Speaker to the Speaker) resign his office; or he may be removed from his office by a resolution of the House, moved after fourteen days' notice passed by majority of all the then members of the House.

**95.** Neither can preside while a resolution for his removal from office is under consideration (Art. 96). In the absence of the Speaker, his duties may be performed by the Dy. Speaker.

The position of the Speaker is sought to be made independant and impartial by charging his salaries and allowances on the Consolidated Fund of India [Art. 112(3)(b)]. He can be removed only by a resolution of a special majority of the House itself [Art. 94(c)]; and he has no vote except in case of a tie [Art. 100(1)].

#### DISQUALIFICATION OF MEMBERS [ARTS. 101-104]

**101.** No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by

law for the vacation by a person who is chosen a member of both the Houses of his seat in one House or the other.

A person shall be disqualified for being a member of either House of Parliament in any one of the following five cases, viz., (a) If he holds any office of profit under the Government of India or the Government of any State, other than the office of a Minister either for the Union or for a State; or (b) if he is of unsound mind and stands so declared by a competent court; or (c) if he is an undischarged insolvent; or (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or (e) if he is so disqualified by or under any law made by Parliament (102).

If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Cl. 1 of Art. 102 the question shall be referred to the President for his decision which shall be final (103(1)). Before giving any decision the President shall obtain the opinion of the Election Commission and shall act according to such opinion [Art. 103(2)].

**Effect of disqualification:** [Art. 101(3)].

If a member of either House of Parliament becomes subject to any of the disqualifications mentioned above, his seat shall thereupon become vacant [Art. 102(3)].

**Member's seat when becomes vacant?** [Art. 101(3) & (4)].

This happens in three cases, viz.,—1. If a member resigns his seat (by writing under his hand addressed to the Chairman or the Speaker) his seat shall thereupon become vacant: [Art. 101(3)]. 2. So also, if for a period of sixty days a member of either House of Parliament is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant: [Art. 101(4)]. 3. Similarly, if a member of either House of Parliament becomes subject to the disqualifications mentioned in Art. 102 (above), his seat shall thereupon become vacant: [Art. 101(3)(a)].

**Penalty for voting by a non-qualified or disqualified person:** (Art. 104).

If a person sits or votes as a member of either House of Parliament before taking the oath or affirmation required by Art. 99 or when he knows that he is not qualified or that he is disqualified or that he is prohibited from so doing by any law,—he shall be liable in respect of each day on which he sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

## DISABILITIES, POWERS, PRIVILEGES & IMMUNITIES OF PARLIAMENT AND ITS MEMBERS

[ARTS. 101(1), 105-106]

**101.** No person shall be a member of both Houses of Parliament; nor can any person be a member of both of Parliament and of a House of Legislature of a State.

**105.** There shall be freedom of speech in Parliament; no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law.

## CONDUCT OF PARLIAMENTARY BUSINESS

[ARTS. 85-88, 99, 100, 104, 121-22]

**85.** The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks it fit but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

**86.** The President may address either House of Parliament, or both Houses assembled together and for that purpose require the attendance of members. He may also send message to either House of Parliament whether with respect to a bill then pending in Parliament or otherwise.

87. He shall, at the commencement of the first Session after each General Election to the House of the People and at the commencement of the first Session of each year, address both Houses of Parliament assembled together and inform Parliament of the causes of its summons. Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matter referred to in such address.

88. Every Minister and the Attorney-General of India shall have the right to speak in and otherwise take part in the proceedings of, either House, any joint sitting of the Houses, and any Committee of the Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

99. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

**Voting in Houses:[Arts. 100 and 104].**

All questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting. The Chairman or Speaker shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

104. If a person sits or votes as a member of either House of Parliament before he has taken the oath as above, he shall be liable in respect of each day on which he so sits or votes to a penalty of Rs. 500/ to be recovered as a debt due to the Union.

**The quorum. [Art. 100(3)(4)]**

The quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House. If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker either to adjourn the House or to suspend the meeting until there is a quorum,

If any business is transacted when there was no quorum its validity would not be open to attack on that ground [Art. 122(1)].

**121.** No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duty except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

**122.** The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure and no officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament, shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

#### LEGISLATIVE PROCEDURE [ARTS. 107-111]

**107.** Subject to the provisions of Arts. 109 & 117 with respect to Money Bills, a bill may originate in either House of Parliament. This Article lays down the rule that the two Houses shall enjoy equal powers in regard to legislation, the only exception being the Finance Bill which can only be introduced in the House of the People.

**107(2).** A Bill shall not be deemed to have been passed by both Houses of Parliament unless it has been agreed to by both Houses.

When a Bill is passed in one House and then sent to another, the latter may take one of the several courses as follows:—

(i) If the latter House agrees to the Bill without amendment, it will be deemed to have been passed by both Houses of Parliament and at once presented to the President for his assent.

(ii) It may reject the Bill altogether. In such a case the provision of Art. 108(1)(a) as to joint sitting may be applied by the President.

(iii) It may pass the Bill with amendments. The Bill will then be returned to the other House. If the House which originated the Bill accepts the amendments, the Bill will be presented to the President for his assent (Art. 111). If, however, the originating House cannot agree to the amendments, and no final agreement between the Houses can be reached by means of negotiation, the President may apply the provision as to joint-sitting.



(iv) It may take no action on the Bill, i.e., keep it lying on its table without returning it to the originating House. In such a case, if 6 months have elapsed since the date of its reception of the Bill, the President may apply the provision as to joint sitting.

**Lapsing of Bills:** [Art. 107(3)-(5)]. A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. Nor shall a Bill which was introduced in the Council of States lapse by dissolution of the House of the People. But a Bill which is pending in the House of the People or which having been passed by that House is pending in the Council of States, shall lapse on a dissolution of the House of the People. But a Bill which originated in the Council of States and is still pending there, not having been passed by the House of the People, will not lapse on account of such dissolution. A Bill pending in the Council not having been passed by the House of the People will not lapse. Similarly, a Bill which is pending in the House of the People, whether originating in that House, or sent to it by the Council of States, shall lapse on dissolution. But a Bill will not lapse as stated above if the President has, prior to the dissolution, notified his intention to summon a joint-sitting of the two Houses.

**Joint sitting of both Houses in certain cases [Arts. 108 & 118].**

Since both the Houses have equal power, it is possible that a deadlock might arise between the two Houses. Art. 108 has been enacted with a view to resolving such a deadlock. It authorises the President to convene a joint sitting of both the Houses under the following circumstances:—

**When can joint sitting be convened?** If after a Bill (other than a Money Bill) has been passed by one House and transmitted to the other House, (a) the Bill is rejected by the other House; or (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

**Who can convene it and how?** The President may notify to the House by message his intention of summoning

the two Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill [Art. 108(1)]. At such a joint sitting the Speaker of the House of the People shall preside [Art. 118(4)]. Any one of the circumstances mentioned in (a), (b) & (c) must exist before the President can convene a joint session and submit the Bill to it, but this rule is inapplicable to Art. 109 (Money Bills). A lapsed Bill cannot be referred to a joint session, but if prior to the dissolution of the House of the People, the President notifies his intention to submit the Bill before a joint sitting the Bill does not lapse by reason of the dissolution of House of People.

**Procedure at Joint Sitzings:** [Art. 108(3)(4)]. Where the President has notified his intention of summoning the House to meet in a joint sitting, neither House shall proceed further with the bill. If at the joint sitting of the two Houses the Bill is passed by a majority of the members of both Houses present and voting it shall be deemed to have been passed by both the Houses. If, however, the Bill has been passed by one House and has not been passed by the other, with amendments and returned to the House in which it originated, no amendment shall be proposed to such a Bill. Similarly, if the Bill has been so passed and returned only with such amendments, as aforesaid, shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed and the decision of the person presiding as to the amendments shall be final. The object is to ensure that the proceedings at the joint sitting may not be unnecessarily delayed. Lastly, where a joint sitting has been summoned prior to the dissolution of the House of the People, the Bill in respect of which the sitting was convened does not lapse on the dissolution of the House of the People. [Art. 108(5)].

111. When a Bill has been passed by the House of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom;

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the

Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

**NOTE:** About the Money Bill the Constitution is silent because it can only be introduced in the House of People on the recommendation of the President, if the President recommends it and it is passed by the House of People then he is presumed to have given his assent to the Bill.

**'POCKET VETO' of the President:** Art. 111 prescribes no time limit within which the President is to declare his assent or refusal or to return the Bill. He may indefinitely postpone the Bill and thus exercise something like a 'Pocket veto', by simply postponing giving his assent to the Bill indefinitely.

### PROCEDURE GENERALLY (Art. 118)

**118.** (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

### **MONEY BILLS**

#### **Special procedure in respect of Money Bills**

109. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

#### **Definition of "Money Bills"**

110. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions

dealing with all or any of the following matters, namely—  
(a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the Consolidated Fund of India; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

#### **Regulation by law of procedure in Parliament in relation to financial business**

**119.** Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in each House of

Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

### **Procedure in Financial Matters**

(Arts. 112-117)

#### **Annual financial statement**

**112.** (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India, and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—(a) the emoluments and allowances of the President and other expenditure relating to his office; (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court; (ii) the pensions payable to or in respect of Judges of the Federal Court; (iii) the pensions payable to or in respect of Judges of any High Court which

exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India; (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India; (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

### **Procedure in Parliament with respect to estimates**

**113.** (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

**117.** (3) A Bill which, if enacted and brought into operation would involve expenditure from the Consolidated Fund of India **shall not be passed** by either House of Parliament unless the President has **recommended** to that House the consideration of the Bill.

### **Appropriation Bills (Arts. 114-115)**

**114.** (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet (a) the grants so made by the House of the People; and (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.



(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

**Supplementary, additional or excess grants**

**115.** (1) The President shall—(a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of People a demand for such excesses.

**Regulation by law of procedure in Parliament in relation to financial business**

**119.** Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.



**Votes on account, votes of credit and exceptional grants**

116. (1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure; (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement; (c) to make an exceptional grant which forms no part of the current service of any financial year; and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

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## CHAPTER VIII

### THE UNION JUDICIARY

All written constitutions have made adequate provisions for the establishment of some Judicial agency for the enforcement of the provisions of the constitution. It is by **Judicial review** that the constitution acquires practical meaning and significance.

"The power of interpreting the laws involves necessarily the function to ascertain, whether they are conformable to the constitution or not; and if not as so conformable, to declare them void and inoperative. As the constitution is the supreme law of the land, in a conflict between that and the laws either of Congress or the States, it becomes the duty of the judiciary to follow that only which is of paramount obligation. This results from the very theory of Republican Constitution of Government, for otherwise the acts of the legislature and executive would in effect become supreme and uncontrolled notwithstanding any prohibitions or limitations contained in the constitution; and usurpations of the worst unequivocal and dangerous character might be assumed, without remedy within the reach of the citizen." (Story J.).

Our constitution has established an independent and impartial judiciary which has by its fearless exposition and impartial interpretation of the constitution exerted a very great influence on the Indian citizens and other departments of government. The English courts have no right to question the validity of the Acts of Parliament but the Indian Judiciary can do so by the touchstone of the Constitution. No doubt, it works within certain limitations and it has no idea of becoming a super-legislature of the American type. The Supreme Court is not charged with the general guardianship against all potential mischief in the complicated tasks of government. "It has no influence over either the sword or the purse; no direction either of the strength or the wealth of the society; and can take no active resolution whatever.

It may truly be said to have neither force, nor will but merely judgment. Courts may modify they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot re-allocate. They can give a broadening construction of the existing powers, but they cannot assign to one authority powers explicitly granted to another."

The one remarkable feature of our judiciary is that we have a single integrated judiciary for the whole Union. But in the U.S.A. the federal and state judiciary are separate. The Federal Court administers and enforces federal laws throughout the country while State Federal Courts only enforce local laws and matters. The judicial system in the U.S.A. is, therefore, organised on the strict **federal principle**. The Constitution of America merely created the Supreme Court but conferred powers upon the Congress to constitute subordinate Federal Courts. State Courts retained their powers and jurisdiction according to the constitution, which is confined to federal matters like those relating to the United States treaties, public ministers, controversies in which the United States is a party and disputes between one State and another. In cases concerning other matters, the State Supreme Courts exercise exclusive jurisdiction and there is an element of finality in their decisions. The Federal Judiciary has nothing to do with the State Courts excepting when a question as regards the interpretation of the Federal Constitution, or the treaties is concerned. It is only in such matters that appeals will lie to the Supreme Court of the United States.

Under the Indian Constitution the Supreme Court and the High Courts are within the same structure and provide remedies in all cases arising under any law. There are no separate Courts to administer State laws. But there is a provision for establishing a dual organisation in this sense, that Parliament can establish additional courts for the administration of laws relating to matters mentioned in the

Union List. Constitutional questions or general questions of law can be raised in all courts of the country in any matter. As a matter of fact the Supreme Court **only** stands at the apex of the Indian judicial system, and as such it lays down and interprets all laws—constitutional or otherwise—with finality. In America also the Supreme Court is a final Court of Appeal in certain matters only. It is not a general court of appeal and in the matters of interpreting the constitutional law of a State, it does so in an indirect exercise of its power to interpret the constitution. It is, therefore, not the final court of appeal as the Supreme Court of India is for all matters. The American Supreme Court cannot impose a uniform interpretation of the laws over all the State courts. The Indian Constitution, under Art. 141, has made a specific provision that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

#### **Supreme Court of India compared with the Supreme Court of the U.S.A.**

According to Shri M. C. Setalvad, the jurisdiction of the Supreme Court and the powers are in their nature and extent wider than those exercised by the highest court of any country in the Commonwealth or even the Supreme Court of America. In **Gopalan's case** the Supreme Court has taken the view that the position of the Indian Judiciary is somewhere between the courts in England and the United States. According to this view, there is no scope for the courts in India to play the same role as that of the Supreme Court of America. These observations have been made on the scope of judicial review and its extent because of the difference in language in certain articles relating to fundamental rights in our Constitution. Further, the provisions regarding the High Courts and the subordinate courts have been laid down in the Constitution. Art. 214 prescribes that there shall be a High Court for each State, but Entry 78, List I of the Seventh Schedule, confers legislative power on Parliament to constitute a High Court and the President will appoint the Chief Justice and such other Judges as he may deem necessary. He can also fix the maximum number of Judges from time

to time in relation to High Courts. Even in case of the subordinate courts, appointments are made and regulated by the Constitution under Arts. 233 and 234. Even Magistrates are not left out from the purview of the Constitution.

### **Supremacy and Independence of the Judiciary**

The Constitution takes every precaution to ensure the supremacy and independence of the judiciary. Firstly, the tenure of office of a Judge does not depend on the favours of the government of the day, nor on the pleasures of the great interests outside the administration. Whether or not the decisions of a Judge bring satisfaction or anger to the Prime Minister and his colleagues or the Head of the State he cannot be dismissed at will, subject only to good behaviour. Secondly, his salary is fixed and is charged on the Consolidated Fund so that it is not subjected to any criticism in Parliament. Thirdly, his conduct cannot even be discussed in Parliament save on a substantial motion for an address for removal from office, an extreme step to be taken only in the event of impropriety of the gravest kind. Fourthly, no one can give him orders as to the manner in which he is to perform his work. The only subordination which he knows of in his official capacity is that which he owes to his oath of office, that is, to the Constitution and the Laws of India.

### **Can our Supreme Court depart from its Previous Decision while deciding Another Case,**

In America the Supreme Court has the power to modify or depart from its previous decisions. This power came in for severe criticism and was dubbed as '**Judicial Repudiation**'. As such repudiations became quite frequent in the decisions of the Supreme Court the criticism became more trenchant and Roberts J. was forced to remark, "such a state of affairs tends to bring adjudications by this tribunal into the same class as a restricted rail-road ticket, good for this day and train only."

The Supreme Court in India has held that it **can depart** from its previous decision and is not bound by it. The prin-

ciple of **Stare Decisis** is not applicable to the Supreme Court. According to Das C. J. "The error, if any, of the Court of Appeal in England may be corrected by the House of Lords or eventually by Parliament by a simple majority. The mistakes, if any, made by the High Court of Australia, if not corrected by itself in a subsequent case, could be set right by the Privy Council when appeals are taken there or by the appropriate legislative authority. An error made by the House of Lords or the Privy Council can easily be rectified by Parliament by a simple majority by an amending statute. But in a country governed by a Federal Constitution, such as the United States of America and the Union of India are, it is by no means easy to amend the Constitution if an erroneous interpretation is put upon it by this Court. (See Art. 368 of our Constitution). An erroneous interpretation of the Constitution may quite conceivably be perpetuated or may at any rate remain unrectified for considerable time to the great detriment to public well-being. The considerations adverted to in the decisions of the Supreme Court of America quoted above are, therefore, opposite and apply in full force in determining whether a previous decision of this Court should or should not be disregarded or overruled. There is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public. Art. 141 which lays down that the law declared by this Court shall be binding on all Courts within the territory of India obviously refers to Courts other than this Court. The corresponding provision of the Government of India Act, 1935, also makes it clear that the Courts contemplated are the subordinate Courts." (**Bengal Immunity Co. v. The State of Bihar**).

**N. B:** For further discussion please refer to pp. 133 to 146 above.

THE UNION JUDICIARY—THE PROVISIONS OF THE CONSTITUTION. (Arts. 124-125)

**124.** There shall be a Supreme Court of India, con-

sisting of a Chief Justice of India and until Parliament by law prescribes a larger number of, not more than 7 other judges. The Judges are appointed by the President and they hold office during his pleasure. Judges of the Supreme Court hold office till the age of 65. A Judge may, by writing under his hand addressed to the President resign his office. A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or (c) is, in the opinion of the President, a distinguished jurist.

He shall before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him, an Oath or affirmation as laid down in Schedule III. After his appointment he is not entitled to plead or act in any Court or before any authority within the territory of India. The salary of the Chief Justice shall be Rs. 5,000 and that of the other judges Rs. 4,000 p.m. Every judge of the Supreme Court shall be entitled, without payment of rent to the use of an official residence.

**How removed:** A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under Art. 124(4).

The independence of the judiciary is sought to be safeguarded by our Constitution under Art. 125(2) which reads that every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence

and pension as may from time to time be determined by or under law made by Parliament and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule with regard to their salaries and allowances. The privileges or the allowances of a Judge or his rights in respect of leave of absence or pension shall not be varied to his disadvantage after his appointment. But when there is a Proclamation of Emergency, the President will have the power to reduce the salaries and allowances of the Supreme Court Judges (Art. 360).

**Appointment of Ad-Hoc Judges: (Arts. 127-128):** If at any time there should **not** be a **quorum** of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, (with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned), request, in writing, the attendance at the sittings of the Court, as an **ad hoc** Judge, for such period as may be necessary of a Judge of a High Court who thereupon shall attend the sittings of the Supreme Court and shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court: (Art. 127).

**128.** The Chief Justice of India may, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court to sit and act as a Judge of the Supreme Court. If such a person consents to do so, he shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of a Judge of that Court.

**Supreme Court to be a Court of Record (Art. 129-130):** The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. The Supreme Court sits ordinarily in Delhi or in such other place or places as the Chief Justice of India, may with the approval of the President from time to time appoint.



## THE THREE JURISDICTIONS OF THE SUPREME COURT: (Arts. 32, 131-139, 142-145, 363 & 374)

32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of **habeas corpus**, **mandamus**, prohibition, **quo warranto** and **certiorari**, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### Original jurisdiction of the Supreme Court

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—(a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, **sanad** or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

### Power of President to consult Supreme Court

143. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise,

which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

### APPELLATE JURISDICTION OF SUPREME COURT IN APPEALS FROM HIGH COURTS IN CERTAIN CASES:

(Arts. 132-137)

**132.** (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

**Explanation.**—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

### Appellate Jurisdiction in Civil matters

**133.** (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High

Court certifies—(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or (c) that the case is a fit one for appeal to the Supreme Court; and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

#### **Appellate jurisdiction of Supreme Court in regard to Criminal matters**

**134.** (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme

Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

**135.** Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

### **Special leave to appeal by the Supreme Court**

**136.** (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

### **Review of judgments or orders by the Supreme Court**

**137.** Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

## **ANCILLARY POWERS OF THE SUPREME COURT; AND**

### **SUPREMACY OF THE SUPREME COURT:**

(Arts. 138-142 & 144)

### **Enlargement of the jurisdiction of the Supreme Court**

**138.** (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Govern-

ment of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

**Conferment on the Supreme Court of powers to issue certain writs**

**139.** Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of **habeas corpus**, **mandamus**, prohibition, **quo warranto** and **certiorari**, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

**Ancillary powers of Supreme Court**

**140.** Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

**144.** All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

**Law declared by Supreme Court to be binding on all courts**

**141.** The law declared by the Supreme Court shall be binding on all courts within the territory of India.

**Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.**

**142.** (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power

to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

### CONSULTATIVE JURISDICTION OF THE SUPREME COURT: (Art. 143)

#### Power of President to consult Supreme Court

143. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

#### RULES MADE BY THE SUPREME COURT TO REGULATE COURT PROCEDURE IN INDIA:

(Arts. 145-147)

145. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

- (a) rules as to the persons practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
- (c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
- (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
- (e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be

entered; (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein; (g) rules as to the granting of bail; (h) rules as to stay of proceedings; (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay; (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

**146.** (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

**147.** In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

**363.** (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, **sanad** or other similar instrument which was entered into or executed before the com-



mencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, **sanad** or similar instrument.

(2) In this article—(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and (b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

#### COMPTROLLER AND AUDITOR-GENERAL OF INDIA

(Arts. 148-151, 124(4) & 148(1), 377, Sch. 3)

#### Comptroller and Auditor-General of India

**148.** (1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court as laid down Art. 124(4). A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

#### HIS DUTIES AND POWERS: (Arts. 149-151)

149. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. The accounts of the Union and of the States

shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

**151.** (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

**N.B.:** For further discussion please refer to pp. 146-7 above.

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## CHAPTER IX.

### THE STATE EXECUTIVE (Arts. 152-167, 177, 213, 217, 361)

Just as the executive power of the Union is vested in the President, so also the executive power of the State is vested in a Governor. Art. 153 lays down that there shall be a Governor for each State, but nothing shall prevent the President from appointing the same person as the Governor of two or more States. All executive power of the State is vested in him and exercised by him either directly or through the officers subordinate to him (Art. 154): All executive action of the Government of a State shall be expressed to be taken in the name of the Governor [Art. 166(1)]. Orders and other instruments done and executed in the name of the Governor shall be authenticated in a specified manner and the validity of an order or an instrument shall not be called in question on the ground that it is not an order or an instrument made or executed by the Governor [Art. 166(2)]. He is appointed by the President by warrant under his hand and seal (Art. 155), and shall hold the office during the pleasure of the President for a period of 5 years or until his successor enters upon his office. He shall not be eligible for appointment as Governor unless he is a citizen of India and has completed the age of 35 years (Art. 157). He shall not be a member of either House of Parliament or of the Legislature of any State and if he is such a member, he shall be deemed to have vacated his seat in that House after his appointment [Art. 158(1)]. He shall not hold any other office of profit [Art. 158(2)]. He shall before entering upon his office make and subscribe in the presence of the Chief Justice of the High Court, or in his absence the senior-most Judge of that Court available, an Oath or affirmation in the form prescribed in Schedule III. He may by writing under his hand addressed to the President, resign his office. He is entitled to a salary of Rs. 10,000/- p.m. as also the

usual allowances. He is entitled to the same powers and privileges to which the Governors of the corresponding provinces were respectively entitled immediately before the commencement of the Constitution. He is entitled to a rent free official residence and to such allowances as Parliament may determine by law. The emoluments and allowances shall not be diminished during his term of office.

**POWERS OF THE GOVERNOR: (Arts. 154,  
162-166, 174 & 213)**

**Executive Power of the Governor:** The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Art. 154). All executive action of the Government of a State shall be expressed to be taken in the name of the Governor (Art. 166). Subject to the provision of this Constitution the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws (Art. 162). The Governor shall have the power of appointing the Chief Minister and other Ministers on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor (Art. 164). The salaries and allowances of the Ministers shall be as the Legislature of the State may determine from time to time.

**174.** (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—(a) prorogue the House or either House; (b) dissolve the Legislative Assembly.

**175.** (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

**176.** (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

**202.** (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement" and of making demands for grants and recommending Money Bills.

**Legislature Power of the Governor (Art. 213):** If at any time, except when the Legislative Assembly of the State is in session or where there is a Legislative Council in a State except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate Ordinances according to the circumstances. Such an Ordinance shall be promulgated with the instructions from the President and a Bill containing the provisions shall be submitted to the President for his approval before introducing the same into the Legislature. The Governor shall have the power of reserving a Bill for the consideration of the President and any Act of Legislature of the State containing the same provisions would be invalid unless the Bill which has been reserved for the consideration of the President has not received his assent. An Ordinance promulgated

under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor.

Every Ordinance shall be laid before the Legislative Assembly or the Council wherever there is one and it shall cease to operate at the expiration of 6 weeks from the re-assembly of the Legislature or if before the expiration of the period, a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Council, and upon the passing of such a resolution, the Ordinance will be withdrawn or it may be withdrawn at any time by the Governor.

### THE VETO POWER OF THE GOVERNOR

(Arts. 200-201)

When a Bill has been passed by the Legislative Assembly of a State, or in the case of a State having a Legislative Council, has been passed by both Houses, it shall be presented to the Governor and the Governor may assent to the Bill or reserve it for the consideration of the President. When a Bill has been reserved for the consideration of the President, the President may declare that he assents to the Bill or he withholds the assent therefrom. In any case, the Bill cannot be a Money Bill because the Governor has no right to reserve a Money Bill for the consideration of the President.

**Power of the Governor to grant pardon and etc.: (Art. 161):** The Governor shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person.

### COUNCIL OF MINISTERS [ARTS. 163-164]

**163.** There shall be a Council of Minister at the head to aid and advice the Governor in the exercise of his function except in so far as he is by or under this Constitution requires to exercise his functions or any of them in his discretion. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by him shall not be called in question on

the ground that he ought or ought not to have acted in his discretion and the question wheher any advice was tendered by Ministers to the Governor shall not be inquired into by any Court.

164. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Before a Minister enters into his office, the Governor shall administer to him the oaths of office and secrecy according to the forms set out for the purpose in the Third Schedule. A Minister who is not a member of the Legislature of the State for a period of six consecutive months, shall cease to be a Minister. The salaries and allowances of Ministers shall be such as the Legislature may determine from time to time.

#### THE CHIEF MINISTER [ARTS. 164(1); 167]

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor, except in States of Bihar, Madhya Pradesh and Orissa, the Ministers in charge of Tribal welfare and welfare of Schedule Caste and other backward classes shall be directly responsible to the Governor. It shall be the duty of the Chief Minister of each State to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administrative affairs of the State and the proposals for legislation as also to furnish such other information as the Governor may call for or submit any matter on which the decision has already been taken by a Minister for the consideration of the Council if the Governor so desires. Every Minister as also the Chief Minister shall have the right to speak in or otherwise to take part in the proceedings of the Legislative Assembly of the State or the Legislative Council and to speak or take part in any Committee of the Legislature of which he may be named a member but by virtue of this Article is not entitled to vote.

#### THE ADVOCATE-GENERAL FOR THE STATE [ARTS. 165, 217, 177]

165. The Governor of each State shall appoint a per-



son who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State who holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. It shall be his duty to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may be referred to or assigned to him by the Governor and also to discharge such functions conferred on him by or under the Constitution or any law for the time being in force. He has also a right to speak in and take part in the proceedings of the Legislative Assembly or the Council but he is not entitled to vote therein (Art. 177).

**NOTE:** For further discussion, please refer to pp. 151-164 above.

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## CHAPTER X.

### THE STATE LEGISLATURE (ARTS. 168-212, 333 & 334)

**168.** For every State there shall be a legislature which shall consist of Governor, and in the States of Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, U.P. and West Bengal, two Houses and in other States one House, known as the Legislative Assembly. In either State the Governor is a part of the legislature.

### THE LEGISLATIVE ASSEMBLY (ARTS. 170, 172-173, 178-81, 333-34)

The Legislative Assembly of each State shall be composed of members chosen by direct election from territorial constituencies in the State which shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it so far as practicable be the same throughout the State. It follows therefore that subject to provisions of Art. 333 the Legislative Assembly of each State shall consist not more than 500 and not less than 60 members. The total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine that this readjustment shall not affect the representation in the Legislative Assembly until its dissolution. Every Legislative Assembly, unless sooner dissolved shall continue for five years and the period of five years shall operate as the dissolution of the Assembly unless it has been extended by Parliament by law for a period not exceeding one year at a time and in any case not beyond six months after the Proclamation of Emergency has ceased to operate.

**173.** A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless he is a citizen

of India, is not less than 25 years of age and in case of Legislative Council not less than 30 years of age, and possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

### OFFICERS OF THE STATE LEGISLATURE (ARTS. 178-181)

**178.** Every Legislative Assembly of a State shall have a Speaker and Deputy Speaker who shall vacate their seats if they cease to be members of the Assembly. They may resign their office by writing under their own hands addressed to each other. They may be removed from their offices by resolution, moved after 14 days' notice passed by majority of all the then members of the Assembly (Art. 179). In the absence of the Speaker, his duties shall be performed by the Deputy Speaker (Art. 180). The Speaker or the Deputy Speaker shall have the right to speak in and otherwise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration, and shall, in spite of anything in Art. 189, be entitled to vote in the first instance but not in the case of equality of votes [Art. 181(2)].

**188.** Every Member of the Legislative Assembly shall, before taking his seat make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form set out in the Third Schedule. If any member sits or votes as a member of the Legislative Assembly before he has complied with Art. 188 or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by any law, he shall be liable in respect of each day on which he so sits or votes, to a penalty of Rs. 500/- to be recovered as a debt due to the State (Art. 193).

### POWERS, PRIVILEGES AND IMMUNITIES OF STATE LEGISLATURE AND THEIR MEMBERS (ART. 194)

(1) There shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature (or any committee thereof) and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings. In other respects, the powers and privileges of the Legislature and the members and the Committees shall be such as may from time to time be determined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this constitution. The members of the Legislative Assembly and Legislative Council shall be entitled to receive such salaries and allowances as may be determined by the Legislature by law and until the provision is made such salaries and allowances at such rates and upon such conditions as were in existence immediately before the commencement of the constitution.

#### DISABILITIES AND DISQUALIFICATIONS OF MEMBERS OF LEGISLATURE (ARTS. 190-93)

190. No person shall be a member of both Houses of the Legislature nor shall he be a member of the Legislatures of two or more States specified in the First Schedule. If for a period of sixty days a member of a House is, without the permission of the House, absent from all the meetings thereof the House may declare his seat vacant.

A person shall be disqualified for being chosen as a member of the Legislative Assembly of a State—(a) if he holds any office of profit (other than that of a minister) under the Government of India or of any State specified in the First Schedule; or (b) if he is of unsound mind and stands so declared by a competent Court; or (c) if he is an undischarged insolvent; or (d) if he is not a citizen of India; or has voluntarily acquired the citizenship of a State or is under any acknowledgement of allegiance or adherence to a foreign State; or (e) if he is so disqualified under any law

made by Parliament (Art. 191). If any question arises as to whether a member of a House has become subject to any disqualification mentioned in Art. 191(1), the question shall be referred to for the decision of the Governor who before giving any decision on such a question shall obtain the opinion of the Election Commission and act accordingly, but his decision once given shall be final. (Art. 192).

#### THE LEGISLATIVE COUNCIL (Arts. 171-173 & 182-185)

**170.** The total number of members in the Legislative Council of a State shall not exceed  $\frac{1}{3}$ rd of the total number of members in the Legislative Assembly of that State. But in no case the number should be less than forty.

(a) Of the total number of members of the Legislative Council as nearly as  $\frac{1}{3}$ rd shall be elected by electorates consisting of the members of municipalities, district boards and other local authorities as specified by Parliament; (b)  $\frac{1}{12}$ th shall be elected by electorates consisting of persons residing in the State and who have been for at least three years graduates of any university in the territory of India; (c)  $\frac{1}{12}$ th shall be elected by teachers of at least three years' standing in educational institutions not lower than that of secondary school; (d)  $\frac{1}{3}$ rd shall be elected by the members of the Legislative Assembly; and (e) the remainder, to be nominated by the Governor, shall be persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement and social service.

**172.** (2) The Legislative Council shall not be subject to dissolution but  $\frac{1}{3}$ rd of the members thereof shall retire on the expiration of every second year in accordance with the provisions made in that behalf by Parliament.

#### OFFICERS OF THE COUNCIL (Art. 182-185)

**182.** The Legislative Council of every State shall choose two members of the Council to be respectively Chairman and Deputy Chairman thereof; who shall vacate their office if they cease to be members of the Council. They may, by writing under their hands, resign their office. They

may be removed from their office by a resolution of the Council passed (after 14 days' prior notice) by a majority of all the then members of the Council. They shall not preside while a resolution for their removal from office is under consideration. But the Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council but shall be entitled to vote only in the first instance but not in the case of an equality of votes (Art. 185).

173. A member of a Legislative Council shall be a citizen of India, 30 years of age, and possess such other qualifications as Parliament may lay down. Every member elected to the Council shall, before taking his seat, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation in the form seven of Schedule III. If a person sits or votes as member of Legislative Council before he has complied with the requirements of Art. 188, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by any law, he shall be liable in respect of each day on which he sits or votes, to a penalty of Rs. 500/- to be recovered as debt due to the State (Art. 193).

**Disqualifications of Members: Arts. 190-193:** A person shall be disqualified for being chosen as a member of the Legislative Council—(a) if he holds any office of profit (other than that of a Minister) under the Government of India or of any States specified in First Schedule, (b) if he is of unsound mind and stands so declared by competent court; (c) if he is an undischarged insolvent, (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State; if he is so disqualified by or under any law made by Parliament. On his becoming subject to any of the above disqualifications his seat shall thereupon become vacant and any one whose seat has been declared vacant sits and votes in spite of the fact

that he knows that he is not qualified or that he is disqualified for membership, he will have to pay a penalty of Rs. 500/- for each day of his so sitting or voting to be recovered as a debt due to the State (Art. 193).

**Disabilities of the members (Art. 190):** No person shall be a member of both Houses of the Legislature of a State nor shall he be a member of the Legislature of two or more States specified in the First Schedule. If for a period of 60 days a member of a House of the Legislature of a State is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant.

**194. Powers and Privileges and Immunities:** There shall be freedom of speech in the Legislature of every State and no member of the Legislature shall be liable to any proceeding in any court in respect of anything said or any vote given by him and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

#### LEGISLATIVE PROCEDURE (Arts. 196-201)

A Bill may originate in either House of the Legislature of a State which has a Legislative Council. The Bill becomes an Act after it passes through both the Houses. If after a Bill, other than a Money Bill, has been passed by the Legislative Assembly and it is transmitted to the Legislative Council and if the Bill is rejected by the Council or more than three months elapse from the date on which the Bill is laid before the Council without it being passed by it or the Bill has been passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may pass the Bill again in the same or in any subsequent session with or without such amendments, and then transmit the Bill so passed to the L. Council. Under such circumstances, the Council may either reject the Bill or detain it for more than one month from the date on which it was laid before the Council without the bill being passed by it, or if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Bill

shall be deemed to have been passed by both the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with or without amendments as suggested by the Legislative Council and agreed to by the Legislative Assembly (Art. 197).

**When do Bills lapse and when not (Art. 196):** A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof, nor shall a Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly lapse on a dissolution of the Assembly. But a Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly (Art. 196).

**Governor's assent to Bills (Arts. 200-201):** When a Bill has been passed by the Legislative Assembly of a State (or, in the case of a State having a Legislative Council, has been passed by both Houses of the legislature of the State), it shall be presented to the Governor who shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President. He may, however, return the Bill (if it is not a Money Bill) together with a message requesting that the House or Houses will reconsider the Bill or introduce such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

**When is assent withheld? Art. 200):** He shall not assent to, but shall reserve for the consideration of the President, any Bill which may so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

**Governor's power of veto compared with the President's power of veto:** When a Bill is presented to the Governor



for his signature after it passes the Houses of Legislature, it would be open to the Governor to take any one of the following steps: (1) He may declare his assent to the Bill, in which case it would become law at once; or (b) He may declare that he withholds his assent to the Bill, in which case the Bill fails to become law; or (c) He may, in the case of a Bill other than a Money Bill, return the Bill for reconsideration to the Houses (or the House where the Legislature is unicameral), with a message. But if the Bill is again passed by the Legislature with or without amendment, it would be obligatory upon the Governor to give his assent to the Bill, which will thereupon become law; or (d) The Governor may reserve a Bill for the consideration of the President. In one case such reservation is compulsory, viz. where the law in question would derogate from the powers of the High Court under the Constitution, or in the case of a Money Bill, so reserved, the President may either declare his assent or withhold it. But in the case of a Bill, other than a Money Bill, the President may, instead of declaring his assent or refusing it, direct the Governor to return the Bill to the Legislature for reconsideration. In this latter case, the Legislature must reconsider the Bill within six months and if it passes it again, the Bill shall be presented to the President again. But it shall not be obligatory upon the President to give his assent in this case too (Art. 201).

**201.** When the Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or he withholds his assent or he may direct the Governor to return the Bill to the House together with such a message to reconsider the Bill or to introduce any suitable amendments therein and if again passed by the Houses with or without amendment it shall then be presented again to the President for his consideration.

#### MONEY BILLS (Art. 198-199)

**198.** A Money Bill shall not be introduced in a Legislative Council. After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council it shall be transmitted to the Legislative Council for its re-

commendations and the Legislative Council shall, within 14 days from the date of receipt of the Bill, return the Bill to the Legislative Assembly with recommendations and the Legislative Assembly, may thereupon either accept or reject all or any of the recommendations of the Legislative Council. However, if the Bill is not returned within the said period of 14 days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly. But if the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by Legislative Assembly. But if the recommendations of the Legislative Council are not accepted the Money Bill shall be deemed to have been passed by both Houses in the form which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council. On every Money Bill there shall be endorsed a certificate of the Speaker of the Legislative Assembly certifying that it is a Money Bill and the decision of the Speaker in such matters shall be final.

#### PROCEDURE IN FINANCIAL MATTERS (Arts. 202-207)

**Annual Financial Statement:** It is a statement of the estimated receipts and expenditure of the State for the year. The Governor shall in respect of every financial year cause it to be laid before the House or Houses of the Legislature of the State.

The estimates of expenditure embodied in the annual financial statement shall show separately the sums required to meet expenditures charged on the Consolidated Fund of the State and such other sums required to meet other expenditure from the same Fund. It shall, moreover, distinguish expenditure on revenue account from other expenditure. The following items shall be charged on the Consolidated Fund of each State:—(1) the emoluments and allowances of the Governor and other expenditure relating to his office; (2) the salaries and allowances of the Speaker,

Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council; (3) debt charges including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt; (4) the salaries and allowances of High Court Judges; (5) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (6) any other expenditure declared by this Constitution, or by the Legislature of the State to be so charged [Art. 202(3)].

#### APPROPRIATION BILLS (Arts. 204-205)

**204.** (1) These are Bills to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—(a) the grants made by the Assembly; and (b) the expenditure charged on the Consolidated Fund of the State. These Bills are introduced after the grants under Art. 203 are made. Art. 204 then proceeds to enunciate an important rule namely that no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article: [Art. 204(3)].

No amendment should be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final [Art. 204(2)].

If the grant under Art. 204 is found to be insufficient or when a need has arisen for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or if any money has been spent on any service during a financial year in excess of the amount granted for that service, the Governor shall cause to be laid before the House (or Houses of Legislature) another statement showing the estimated amount of that expenditure (Art. 205).

## VOTES ON ACCOUNT, VOTES OF CREDIT AND EXCEPTIONAL GRANTS (Art. 206)

The Legislative Assembly of a State shall have power—  
(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year; (b) to make a grant for meeting an unexpected demand upon the resources of the State, and (c) to make an exceptional grant which forms no part of the current service of any financial year and the Legislature of the State may authorise the withdrawal of money from the Consolidated Fund of the State for the purposes for which the said grants are made (Art. 206).

## PROCEDURE GENERALLY (Art. 208-212)

**208.** A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. Until such rules are made the rules which were in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect and shall be subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council. The Governor after consulting the Speaker and the Chairman may make rules as to the procedure with respect to communications between the two Houses.

**209.** The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in the House or Houses of the Legislature in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature under Art. 208 or with any rule or standing order having effect in relation to the Legislature of the State, such provision shall prevail.

**210.** The business in the Legislature of a State is to be transacted in the official language of the State or in Hindi

or in English. But after 26th January, 1965, all business of a State Legislature must be carried in the official language of State or in Hindi.

**211.** No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

**212.** The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. And no officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(For further discussion please refer to pp. 165-173 above).

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## CHAPTER XI.

### THE HIGH COURTS IN THE STATES

(Arts. 124, 214-230, 235)

**214.** There shall be a High Court for each State and every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.

**217.** Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the C.J. of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the C.J. of that High Court and shall hold office, until he attains the age of 60 years. But Art. 224, which has been substituted for the original Article by the Seventh Amendment, lays down that if by reason of any temporary increase in the business of a High Court, it appears to the President that the number of Judges of that Court should be increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years. But no person can hold the post of an additional Acting Judge of a High Court after attaining the age of 60 years. A Judge may, by writing under his hand addressed to the President, resign his office or a Judge may be removed by the President in the manner laid down in Art. 124(4) for the removal of a Judge of the Supreme Court. A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and has for at least 10 years held a judicial office in the territory of India and has for at least 10 years been an Advocate of a High Court or of two or more Courts in succession.

**219.** Every person appointed to be a Judge of a High Court, shall, before he enters upon his Office make and subscribe before the Governor of the State or some person appointed in that behalf by him, an oath or affirmation according to the form VIII of Schedule 3. The Judges of each High Court shall be paid such salaries and allowances as are specified in the Second Schedule and during his tenure of office as a Judge, his rights and privileges shall not be curtailed.

**222.** The President may, after consultation with the Chief Justice of India transfer a Judge from one High Court to any other High Court.

**220.** No person who, after the commencement of the constitution has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts. Further, a Judge of the High Court shall not be removed from his Office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

**121.** No discussion shall take place in Parliament with respect to the conduct of any Judge of a High Court in the discharge of his duty except upon a motion for presenting an address to the President praying for the removal of the Judge.

#### POWERS OF THE HIGH COURT (Arts. 226-228, 235)

**226.** Notwithstanding anything in Art. 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or

authority, including in appropriate cases any Government, within those territories directions, orders, or writs, including writs in the nature of **habeas corpus**, **mandamus**, prohibition, **quo warranto** and **certiorari**, or any of them, for the enforcement of fundamental rights and for any other purpose. These powers shall not be in derogation of the powers conferred on the Supreme Court by Art. 32(2).

**227.** Every High Court shall have the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The High Court may call for returns from any subordinate court or it may make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts and prescribe forms in which books, entries and accounts shall be kept by the officers of any such court. The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein. The Courts or tribunals constituted by or under any law relating to the Armed Forces shall be exempted from the operation of Art. 227.

**228.** The High Court has the power of ordering a transfer of pending cases in subordinate courts if it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may either dispose of the case itself or determine the question of law and return the case to the court from which it was withdrawn together with a copy of its judgment on such question and the said court on receipt therefore shall proceed to dispose of the case in conformity with such judgment.

**235.** The High Court shall have the control over district courts and other subordinate courts including the posting and promotion and the grant of leave to persons belonging to the judicial service of the State and holding any post inferior to the post of district judge shall be vested in the High Court.



EXTENSION OF THE JURISDICTION OF THE HIGH COURT AFTER THE STATES' REORGANISATION ACT, 1956 (ARTS. 230-231)

**230.** Parliament may by law extend the jurisdiction of a High Court to or exclude the jurisdiction of a High Court from, any Union Territory. Where the High Court of a State exercises jurisdiction in relation to a Union territory,—(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and (b) the reference in Art. 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

**231.** Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory. In relation to any such High Court—(a) the reference in Art. 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction; (b) the reference in Art. 277 to the Governor shall, in relation to any rules, forms or tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate; and (c) the references in Arts. 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in Arts. 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

**NOTE:** For the original articles 230, 231, 232, the above two articles, viz., 230 & 231 have been substituted by the Constitution (Seventh) (Amendment Act) 1956.

**229.** Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct, provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission. The Chief Justice shall prescribe the conditions of service of officers and servants of a High Court provided that the rules relating to the conditions of service salaries, allowances, leave or pensions, shall require the approval of the Governor of the State. The Administrative expenses of a High Court, including salaries, allowances and pensions payable to or in respect of officers and servants of the Court, shall be charged upon the Consolidated Fund of the State.

#### SUBORDINATE COURTS (ARTS. 233-237)

**233.** Appointments of persons to be, and the posting and promotion of, district judges, shall be made by the Governor of the State in consultation with the Chief Justice of that High Court. To be eligible for an appointment of a district judge a person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an Advocate or a pleader and is recommended by the High Court for appointment.

**234.** Appointments of persons other than District Judges shall be made by the Governor of the State in consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

**235.** The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service and holding a post inferior to that of a District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from such a person any

right of appeal which he may have under the law regulating the condition of his service.

**237.** The Governor may by public notification make any of the above provisions applicable to any class or classes of Magistrates in the State as they apply in relation to persons appointed to judicial service of the State.

**NOTE:** For further discussion please refer to pp. 174-179 above.

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## CHAPTER XII

### THE UNION TERRITORIES (Arts. 239-242)

**The States in Part B of the First Schedule.** Repealed by Sec. 29 of the Constitution (Seventh Amendment) Act, 1956, and substituted by Sec. 17 for the original heading "The States in Part C of the First Schedule". Original Arts. 239 and 240 have been substituted by the new Arts. 239 and 240.

**239.** Every Union territory shall be administered by the President, acting to such extent as he thinks fit through an administrator to be appointed by him with such designations as he may specify. The President may also appoint the Governor of a State as the administrator of an adjoining Union territory and where a Governor is so appointed, he shall exercise his functions independently of his Council of Ministers.

**240.** The President may make regulations for peace, progress and good government of the Union territory of, the Andaman and Nicobar Islands, the Laccadive, Minicoy and Amindivi Islands. Any regulation made by the President shall have the same force and effect as an Act of Parliament which applies to that territory.

**241.** Parliament may by law constitute a High Court for a Union territory or declare any court in such territory to be a High Court for all or for any of the purposes of this Constitution. The High Court so constituted shall have the same powers to punish for contempt of itself as a High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956 and shall continue to exercise such jurisdiction in relation to that territory after such commencement. Nothing in this Article derogates from the power of Parliament to extend or exclude the jurisdiction of the High Court for a State to, or from any Union territory or part thereof.

## CHAPTER XIII

### RELATIONS BETWEEN THE UNION AND THE STATES

(Arts. 245-254, 369 & Sch. 7)

**Distribution of Legislative Powers:** Parliament may make laws for the the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. But no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Inspite of this Parliament has exclusive powers to make laws in respect of any of the matters enumerated in List I in the Seventh Schedule, referred to as "the Union List". Similarly, Parliament and the Legislature of any State shall have power to make any laws in respect of any of the matters enumerated in List III and called the "Concurrent List". The Legislature of any State has also the exclusive power to make laws for such States or any part thereof with respect to matters enumerated in List II, called the "State List." Parliament has also the power to make laws with respect of any matter for any part of the territory of India not included in a State notwithstanding that such a matter is a matter enumerated in the State List.

**247.** Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

**248.** Parliament has exclusive power to make any law with respect of any matter not enumerated in the Concurrent and State Lists and this power includes the power of making any law imposing a tax not mentioned in either of those Lists.

**249.** If the Council of States has declared by resolution of not less than  $\frac{2}{3}$ ds of the members present and voting that it is necessary or expedient in the national interest

that Parliament should make laws with respect to any matters enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter, while the resolution remains in force. The period during which such a resolution can remain in force is one year, provided, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner indicated above such resolution shall continue to be in force for a further period of one year. But if Parliament passes a law which it would not be competent to pass but for the provision of the resolution as contained in Art. 249, then such a resolution shall cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force.

**250.** While a Proclamation of Emergency is in operation, Parliament shall have powers to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

**251.** Nothing in Arts. 249 and 250 shall restrict the power of Legislature of a State to make any law which under this Constitution it has power to make. But if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, the law made by Parliament, whether passed before or after the law made by the Legislature of the State shall prevail and the State law to the extent of the repugnancy shall be inoperative so long as the law made by Parliament continues to have the effect.

**252.** If it appears to the Legislatures of two or more States that it would be desirable if Parliament would legislate with respect to matters over which Parliament has no power to make law for the States except as provided in Arts. 249 & 250, and if resolutions to that effect are passed by the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States or any other State by which it is adopted afterwards by resolution passed in that behalf by the House or Houses. Any Act so passed

by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

**253.** Parliament has power to make laws for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries and any decision made at international conferences, association or other body.

#### ADMINISTRATIVE RELATIONS (Arts. 256-263)

**256.** The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

**257.** Not to impede or prejudice the exercise of the executive power of the Union, the executive power of the State shall be so exercised. For this purpose the executive power of the Union shall give directions to a State including the directions as to the construction and maintenance of communication of national or military importance and measures to be taken for the protection of any railways, within the State. All costs incurred in the carrying out of these two directions will be paid by the Government of India to the State as may be agreed between them, or, in default of agreement as may be determined by an Arbitrator appointed by the Chief Justice of India in respect of the extra cost so incurred by the State.

**261.** Full faith and credit shall be given throughout India to public Acts, records and judicial proceedings of the Union and of every State and final judgments or orders passed by civil courts in any part of India shall be capable of execution anywhere within India. The manner in which and the conditions under which these matters shall be kept shall be determined by law made by Parliament.

**258.** The Union Parliament shall have power to confer powers on the States in respect of certain matters to which the executive power of the Union extend. For this purpose a law made by Parliament would confer powers and impose duties or authorise the conferring of powers and imposing of duties upon the State or officers and authorities thereof. The expenses incurred by the State for carrying out matters which are under the jurisdiction of the Union, the Government of India shall pay such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in this respect.

**258A.** Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

**260.** The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory but every such agreement shall be subject to, and governed by any law relating to the exercise of foreign jurisdiction for the time being in force.

### DISPUTES RELATING TO WATERS

**262.** Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of or in, any inter-State river or river-valley. It may also provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint.

### CO-ORDINATION BETWEEN STATES & ZONAL COUNCILS

**263.** If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or



all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

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## CHAPTER XIV

### FINANCE, PROPERTY, CONTRACTS AND SUITS (Arts. 265-300)

**265.** No tax shall be levied or collected except by the authority of law. The property and income of a State shall be exempt from Union taxation, but Parliament may by law provide in respect of a trade or business of any kind carried on by or on behalf of the Government of a State, the imposition of any tax to such extent as Parliament may determine, (Art. 289).

**285.** The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State, except in so far as Parliament may by law otherwise provide.

**286.** No law of a State shall impose or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—(a) outside the State; or (b) in the course of the import of the goods into, or export of the goods out of, the territory of India. For this purpose Parliament may by law formulate principles for determining when a sale or purchase of goods takes place. Any law of a State which tries to regulate the levying of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

**287.** Government shall be exempt from paying all taxes on electricity consumed by it, in the construction, maintenance or operation of any railway by the Government of India.

#### CONSOLIDATED AND CONTINGENCY FUND

(Arts. 266-267, 283-284, 289 & 291)

**Consolidated Fund of India or a State (Arts. 266 & 291):** All revenues received, all loans raised by the issue

of treasury bills, loans or ways and means advances and all moneys received by the Government of India or by the Government of a State shall form one consolidated fund called "the Consolidated Fund of India", or "the Consolidated Fund of the State", as the case may be. Moreover, no moneys out of such Consolidated Funds shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be (Art. 266). Moreover, all sums to be paid to any Ruler of a State as privy purse shall be charged on, and paid out of, the Consolidated Fund of India; and the sums so paid to any Ruler shall be exempt from all taxes on income (Art. 291).

#### THE CONTINGENCY FUND OF INDIA OR A STATE (Art. 267)

Parliament (or the Legislature of a State) may establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India," (or "the Contingency Fund of the State") into which shall be paid such sums as may be determined by law, and the said Fund shall be placed at the disposal of the President (or the Governor of the State) to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure, pending authorisation of such expenditure by Parliament by law under Art. 115 or Art. 116 (or the Legislature of the State by law under Art. 205 or Art. 206).

**Custody of Consolidated Funds (Arts. 283-284):** The Custody, etc. of Consolidated Funds, Contingency Funds and moneys credited to the public accounts shall be regulated by rules made by the President or the Governor of a State as the case may be (283). Custody of suitors' deposits and the other moneys received by public servants and courts shall be with the public account of India or a State as the case may be (Art. 284).

## DISTRIBUTION OF REVENUES BETWEEN THE UNION AND THE STATES (Arts. 268-282)

Art. 268 deals with duties levied by the union but collected and appropriated by the States such as stamp duty, excise duties on medicinal and toilet preparations as mentioned in the Union List and the proceeds of such duties shall not form part of the consolidated fund of India but shall be assigned to that State.

Art. 269 deals with duties and taxes levied and collected by the Union but assigned to the States, viz. duties in respect of succession to property and estate duty in respect of property other than agricultural land; terminal taxes on goods and passengers carried by railway, sea or air; taxes on railway fares and freights, on transaction in stock exchanges and future markets, and on the sale or purchase of newspapers and on advertisements published thereon.

Under Arts. 270 and 272, taxes are levied by the Union but distributed between the Union and the States, e.g. taxes on income other than agricultural income. The Government of India levies and collects but a prescribed percentage of the net proceeds in any financial year shall be assigned to the States within which the tax is leviable. Parliament may at any time, increase any of the duties or taxes referred to above.

**274.** No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

**Grants from Union to States: (Art. 275):** Such sums

Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance and different sums may be fixed for different States. Such grants-in-aid, shall be to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes or raising the level of administration of the Scheduled areas therein to that of the administration of the rest of the areas of the State. But with regard to the grants-in-lieu of export duty on jute and jute products, there shall be charged on the Consolidated Fund of India, in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States such sums as may be prescribed. This facility is to be given for a period of 10 years from the commencement of the Constitution.

### FINANCE COMMISSION

**280.** The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. The qualification of the members shall be determined by Parliament by law. It shall be the duty of the Commission to make recommendations to the President as to the distribution, between the Union and the States, of the net proceeds of taxes which are to be or may be divided between them and the allocation between the States of the respective shares of such proceeds; (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India; (c) any other matter referred to the Commission by the President in the interests of sound finance. The recommendations made by the Finance Commission shall be placed before each House of Parliament by the President, as required under Art. 281.

## BORROWING POWERS OF THE GOVERNMENT OF INDIA AND THE STATES (Art. 292-3)

**292.** The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India and to the giving of guarantees within such limits as may be so fixed.

**Power of States to borrow: [Art. 293(1)]:** The executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits.

**293.** (2) The Government of India may make loans to any State, or give guarantees in respect of loans raised by any State and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India. Similarly a State may not, without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India.

## PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS (Arts. 294-300)

### Vesting of Property in Government (Art. 294-297)

All property and assets which were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any

adjustment made or to be made by reason of the creation of the Dominion of Pakistan (Art. 294).

Similarly, all property and assets which were vested in any Indian State shall vest in the Union (Art. 295).

So also any property in India which, if this Constitution had not come into operation, would have accrued to His Majesty or to the Ruler of an Indian State by escheat or lapse, or as **bona vacantia** for want of a rightful owner, shall, if it is properly situate in a State, vest in such State, and shall, in any other case, vest in the Union.

Likewise, all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union ((Art. 297).

**298.** The executive power of the Union and of each State shall extend to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State and to the purchase or acquisition of property for those purposes respectively and to the making of contracts. All properties acquired for the purposes of the Union or of States shall vest in the Union or in such State as the case may be.

**Liability to sue or be sued on contracts (Arts. 299-300) :**

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or the Governor, and all such contracts and assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by persons who may be directed or authorised in such manner. Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State (Art. 300),

## CHAPTER XV

### SERVICES UNDER THE UNION AND THE STATES

(Arts. 308-323)

**308.** In this Part the expression "State" does not include the State of Jammu and Kashmir. The appropriate Legislature of a State may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. The President or the Governor may make such rules regulating the recruitment, and the conditions of service of persons appointed, to such services and post until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rule so made shall have the effect subject to the provisions of any such Act. Every member of Defence Service or Civil Service of the Union or an all-India service and every such member of a State holds office during the pleasure of the President or the Governor of the State. But if the post is abolished then the person whose services have been terminated shall be paid reasonable compensation. And if the person is not connected with any misconduct on his part and is required to vacate that post then also he shall be paid reasonable compensation.

No person holding office under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed and no such person shall be removed or reduced in rank or dismissed from service until he has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. But when he is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or where it is not reasonably practicable to give that person an opportunity of showing cause or where the President or Governor is satisfied that,



in the interest of the security of the State, it is not expedient to give to that person such an opportunity (Art. 311).

**335.** In the making of an appointment to services and posts of the Union or of a State, the claims of the members of the Schedule Caste and Schedule Tribes and the Anglo-Indian Community must be taken into consideration. For the purpose of recruitment, during every succeeding period of two years, the number of posts reserved for the Anglo-Indian community in services of the Railway, Customs, Post and Telegraphs, as merely as 10% of the reserved posts shall be reduced from the number so reserved during the immediately preceding period of two years, so that all such reservations shall cease after a period of 10 years from the commencement of the Constitution (Art. 336).

#### PUBLIC SERVICE COMMISSION (Arts. 315-323 & 378)

315. Subject to the provisions of this Article, there shall be a Public Service Commission for the Union and a P.S.C. for each State. But two or more States may agree that there shall be one P.S.C. for that group of States, if a resolution to that effect is passed by the House or the Houses of Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State P.S.C. to serve the needs of those States. The P.S.C. for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

316. The Chairman and other members of the Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President and in case of a State Commission, by the Governor of the State. Such persons must have held office either under the Government of India or under the Government of State for atleast 10 years. A member of a P.S.C. shall hold office for six years from the day on which he enters upon his Office or until he attains, in the case of the Union Commission the age of 65 years, and in case of a State Commission or a Joint Commission the age of 60 years. A member may, by writ-

ing under his hand addressed either to the President or to the Governor as the case may be resign his office. The Chairman or any other member of a P.S.C. shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President has, on inquiry, reported that he should be removed. The President may, in the meanwhile, suspend such a member. Art. 317(4) lays down the definition of misbehaviour which includes being concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or (ii) participating in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company. The President may by order remove from office the Chairman or any member of a P.S.C. if he is adjudged an insolvent or engages during his term of office in any paid employment outside the duties of his office or is in the opinion of the President unfit to continue in the office by reasons of infirmity of mind or body. On ceasing to hold office the Chairman or a member of the Union P.S.C. or the State P.S.C. shall be ineligible for any other appointment either under the Government of India or under the Government of a State.

### FUNCTIONS OF PUBLIC SERVICE COMMISSION

(Arts. 320-323)

It shall be the duty of the Union P.S.C. to conduct examinations for appointments to the services of the Union and of the State respectively. It shall assist other States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required and advise on any of the following matters referred to them viz., (a) on all matters relating to the method of recruitment to civil services and for civil posts; (b) on the principles to be followed in the making of promotions and transfers from one service to another, on the suitability of candidates for such appointments, promotions or transfers; (c) On all disciplinary matters affecting a

Government servant including memorials or petitions relating to such matters; (d) on any claim by or in respect of a Government servant that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State; (e) on any claim for the award of a pension in respect of injuries sustained by a Government servant and any question as to the amount of any such award, and (f) on any other matter which the President, or the Governor of the State, may refer to them (Art. 320).

321. An Act made by Parliament, or the Legislature of a State, may provide for the exercise of additional functions by the Union P.S.C. or the State P.S.C. as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or any public institution.

322. The expenses of the Union or State P.S.C. including any salaries, allowances and pensions to the members or staff of the Commission, shall be charged on the Consolidated Fund of India or of the State as the case may be.

323. It shall be the duty of the Union P.S. Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report, the President shall cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament. In a similar manner it shall be the duty of the State P.S. Commission to present annually a report to the Governor and the Governor shall on receipt of such report cause a copy thereof together with a memorandum explaining, as respects the cases if any, where the advice of the Commission was not accepted and the reasons for such non-acceptance to be laid before the Legislature of the State,

## CHAPTER XVI

### ELECTIONS

Part XV, Arts. 324-329 lay down the procedure in which the elections in this country are to be held. In a democratic set up, elections play a very important part because the type of representatives selected by the people for the different legislatures will certainly affect the type of laws that may be passed, for laws affect the lives of the citizens from all possible angles. We may even say that the provisions regarding elections are the very foundations for the functioning of a successful democratic constitution. Hence special attention has been paid in order to assure fair and just elections so that the machinery may not in any way degenerate into an instrument for furthering the cause of the party in power.

We have made a bold experiment in establishing universal adult franchise, and for that purpose special provisions have been made in order to see that the ignorant masses are in no way exploited by sentimental politicians. Under Art. 324, an independent Election Commission has been established for the superintendence, direction and control of the preparation of the electoral rolls, and the conduct of all elections to Parliament and to the Legislature of every State and of the election to the offices of President, and Vice-President held under this constitution, including the appointment of Election Tribunal for decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States.

Art. 324(2) lays down the provision with regard to the appointment of an Election Commission consisting of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, sub-

ject to the provisions of any law made in that behalf by Parliament, be made by the President.

Art. 324(3) provides for the appointment of the Chief Election Commissioner as Chairman of the Election Commission.

Art. 324(5) makes provision for the security of tenure and other conditions of service.

Under Art. 324(6) the President or the Governor should make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Art. 325 lays down that no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Under Art. 326, it is laid down that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Under Art. 327, Parliament has been empowered to make provisions with respect to all matters relating to, or in connection with elections, to either House of Parliament or to the House or either House of Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. In the same way, the State Legislature under Art. 328, is empowered to make provisions with respect to all matters connecting the election held in the particular State. Under the Representation of

People Act, 1950, and 1951 the provisions in Art. 328 have been modified from time to time particularly with regard to allocation of seats to such constituencies and with regard to the validity of any law relating to the delimitation of the constituencies made under Arts. 327 or 328.

### Principles of the Law of Election

Art. 329 of the Constitution says, "Notwithstanding anything in this Constitution—(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art. 327 or Art. 328, shall not be called in question in any court; (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

From this it follows that Art. 329(a) relates to the entire process of the election and has nothing to do with the decision of an Election Tribunal as to the validity of the Election. Under Art. 329(b) the jurisdiction of the High Court is barred from issuing directions to the Returning Officer with regard to the procedure in the Elections viz., the procedure in counting, preparation of returns, rejection and acceptance of nominations. In short, **the Courts have no authority to interfere in the jurisdiction and the electoral process.** The jurisdiction of the courts can only be invoked **after** the elections and there is very good reason for this restriction for if the courts were allowed to hear election petitions with regard to the procedure followed by the Election commission, no elections would ever be held in any democratic country and the whole constitutional machinery would come to a standstill. Ordinarily, even the Supreme Court will not sit as a court of further appeal on facts and interfere with the decisions of the Election Tribunals on such matters. The interference of the Supreme Courts and the High Courts would only come under the special powers

granted to them under the Constitution and in the exercise of these powers the Supreme Court and the High Courts have laid down certain principles with regard to the jurisdiction and limitations of courts in the elections as follows:—

“The right of seeking election and sitting in Parliament or in a State Legislature is a creature of the Constitution and when the Constitution provides a special remedy for enforcing that right no other remedy by ordinary action in a court of law is available to a person in that regard. The Election Tribunal is endowed undoubtedly with a special jurisdiction, but once it is held that it is a judicial Tribunal empowered and obliged to deal judicially with disputes arising out of and in connection with election, the over-riding power of this Court to grant special leave, in proper cases would certainly be attached and this power cannot be excluded by any Parliamentary legislation.”

“The clause in Article 329 debars us, as it debars any other Court in the land, to entertain a suit or proceeding calling in question any election to the Parliament or the State Legislature. It is the Election Tribunal alone that can decide such disputes, and the proceedings have to be initiated by an election petition and in such manner as may be provided. But once that Tribunal has made any determination or adjudication on the matter the powers of this Court to interfere **by way of special leave** can always be exercised.”

For the purpose of establishing the different procedures with regard to the Election Law, Parliament has passed different Acts, particularly the Representation of People Act. The following are some of the important provisions of this Act:—

1. The Act lays down further disqualifications for a person being chosen as a member of any Legislature. These disqualifications are in addition to those disqualifications laid down in the Constitution. It is provided that the disqualifications mentioned in the Act should not exist on the date of nomination of a candidate for an election and on the date when the results are declared.

2. Sec. 30 of the Act of 1950, provides:—(a) no civil Court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in the Electoral Roll for a particular constituency, and (b) the question, the legality of any action taken by or under the authority of the Electoral Office, or any decision given by any authority appointed under this Act for the revision of any such roll.

3. Under Sec. 105 of the Act of 1951, it is laid down that every order of the Tribunal made under that Act shall be final and conclusive. But this section cannot in any way fetter the over-riding powers given to the Supreme Court and the High Courts under Arts. 136, 226 and 227.

4. An elector is a person whose name has been entered in the Electoral Roll of that constituency and who is not subject to any of the disqualifications mentioned under Sec. 16 of the Representation of Peoples' Act, 1950.

The Act of 1951, lays down certain offences in connection with the Elections which are punishable under the Indian Penal Code. It also makes other categories of offences punishable, viz., (a) prohibition of public meetings on election day, (b) disturbance of election meetings, (c) illegal hiring or procuring of conveyances, (d) canvassing in or near polling stations, (e) misconduct at the polling stations, (f) removal of ballot papers, (g) maintenance of secrecy of voting, (h) officers acting or influencing voting, (i) breaches of official duty by officers connected with elections, and (j) offences relating to fraudulently defacing, destroying, or removing or dealing with nomination papers, ballot papers, ballot boxes, etc.

6. As soon as the President or the Governor issues a notification calling upon the respective constituencies to elect members to the different legislatures, the Election Commissioner issues a notification in the official Gazette fixing the last date for making nominations, the date for the scrutiny of such nominations, the last date of withdrawals of the candidatures, the day on which ballot boxes shall be taken, and the date before which the elections shall be completed.



Nomination papers, after being properly filled in as per the rules, are to be delivered to the proper Returning Officer on or before the date fixed for this purpose. The nomination paper should be in the prescribed form and signed by the elector and proposer or proposers of the constituency. Now, no seconder is necessary.

The person standing for election must deposit a specified sum of money as is required, at or before the time of the delivery of his nomination papers.

The Returning Officer scrutinises the nomination papers on the appointed date and prepares a list of validly nominated candidates and fixes the same on his notice board.

If a nomination paper of a candidate is rejected by the Returning Officer a candidate has no immediate remedy in any court of law. He has only to wait till the elections are over and then file his election petition with the Election Tribunal set up for this purpose.

7. After the elections, an election petition calling in question any election may be presented on any grounds specified in sub-section 1 of Secs. 100 and 101 of the Representation of the People Act, 1951, to the Election Commission. The Election Petition may be presented by any candidate to such an election or any elector who was entitled to vote at such an election.

The Election Commission would then constitute an Election Tribunal for the purpose of deciding such disputes. The Tribunal is vested with judicial powers under the Civil Procedure Code for the purpose of trying these disputes and parties are allowed to engage advocates to plead their cases on their behalf. If the parties are dissatisfied with the decision of the Election Tribunal an appeal can lie to the High Court of the State in which the Election Tribunal is situated. The High Court can then go into the question of **facts as well as law** arising out of the issue before it. If the parties are still not satisfied, then under Art. 136, the jurisdiction of the Supreme Court can be invoked.

### Universal and Adult Franchise

The Indian Constitution has taken a bold and a unique step by introducing universal adult suffrage. In the General Elections of 1957, 193 million people voted as compared to 180 million in 1951. We have already seen that the success of democracy depends upon the quality of the voters and not on the quantity, for democracy is not a matter of counting hands or heads. The fundamental right to vote must be exercised in such a manner so as to select candidates who truly represent the hopes and aspirations of the people. The General Elections of 1951 and 1957 have amply justified the faith put in the voters who exercised their commonsense in the right direction. In considering the problem of adult franchise, we are face to face with the problem of illiteracy, which is a very great handicap particularly, looking to the size, the nature of the population, the number of religions followed by the people. It is, therefore, imperative that such a vast population endowed with such a vast power given to them by the Constitution should be so harmonised so that the principle of universal adult suffrage would prove a great boon to the country, at the same time introduce political consciousness and a respect for our Constitution and the Law. In view of this it is necessary that the different parties should so organise their political bureau for the dissemination of knowledge to the people in such a way so as to enable them to exercise their abundant common sense for the good of the country. A mere appeal to the emotions of the people will not bring in proper leaders to whom we can entrust the reigns of the government without any fear.

One of the dangers, or should we say, one of the shortcomings of the right of election, is that not many people exercise this fundamental right, even though they are called upon to do so once in every five years. There are many who are lethargic and do not wish to stir out of their homes in order to exercise their votes. There are others who are just careless or disinterested, while there are others who go to vote on account of some compulsion or in order to favour a certain candidate, inspite of the fact that the candidate con-

cerned does not deserve their votes. The different Acts passed by Parliament have made sufficient provisions in order to see that such undue influences are not brought upon the candidates and the voters are allowed to exercise their intelligence, looking to the qualifications, and merits of the candidates standing for elections.

All the above problems with regard to adult suffrage are very common in all the countries of the world. The need for our country is the increase in literacy of the people by providing free and compulsory education upto a particular standard to all people in the country as is laid down under Arts. 41, 45 and 46. **By education we mean sound and practical education and not mere book knowledge.** From that point of view an average Indian, though illiterate, is more practical and intelligent as compared to an ordinary degree holder in this country. We require education in the right direction. It is only when we introduce proper education which would harness the tremendous political energies of this country in the right direction that we can hope to achieve the best results of adult suffrage.

In some countries the principles concerning the electoral systems like universal suffrage and etc. have been laid down in the Constitutions themselves. For example, the Constitution of Sweden prescribes the law relating to the electoral system and other matters. Other details like the methods of voting, allocation of seats and etc. are regulated by the ordinary laws.

In England, there is a Ballot Act and Representation of Peoples Act and Parliament has full powers to regulate elections in the country. The disputes relating to the qualification of the elected candidate is inquired into by the House itself, but disputes regarding the manner of election, irregularity or illegality with regard to the elections are referred to by the House to the two Judges of the High Court who hear the evidence and give the decision to the Speaker of the House. The House then considers the judgment and may either confirm or reject the election of a candidate. The decision of the House in such matters is final.

Under the American Constitution, every State is free to adopt its own suffrage regulations for the purposes of election to the State Legislatures and Local Bodies, and are subject only to the provisions under the 15th and the 19th Amendments, forbidding any State to deny or abridge the right of the citizens of the United States to vote on account of, race, colour, and previous condition of servitude or sex. It is well said, "The 13th Amendment made the Negro free; the 14th Amendment made him a citizen; the 15th gave him the vote." It follows, therefore, that the American Constitution does not directly confer the privilege of voting on any citizen as is done under the India Constitution under Art. 326. Further, each House of the Congress has exclusive right to judge the validity of the election and the qualifications of its own members. Under the Legislative Reorganisation Act, 1946, election disputes are heard by the Committee on House Administration in the House of Representatives.

### **The Election Commission**

**324.** (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

### **Superintendence, direction and control of elections to be vested in an Election Commission**

**324.** (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in the Election Commission.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

**The Election Commission:** The Election Commission shall consist of the Chief Election Commissioner and other Election Commissioners all of whom shall be appointed by the President. The Chief Election Commissioner shall act as the Chairman of the Election Commission.

**Its functions:** The functions of the Election Commissioner are laid down in Art. 324(1). They are:—the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in the Election Commission.

**How constituted:** Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by Clause (1).

**Conditions of service and tenure of office:** Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. The President or the Governor of a State, shall, when requested by the Election Commission, make available to the Commission such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Art. 324(1).

**Advisory Functions of the Election Commission**  
(Arts. 103, 192)

103. (1) If any question arises as to whether a mem-

ber of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Art. 102, the question shall be referred for the decision of the President and his decision shall be final. (2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

**192.** (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of Art. 191, the question shall be referred for the decision of the Governor and his decision shall be final. (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

**NOTE:** Under Art. 71(1), all doubts and disputes arising out of or in connection with the elections of the President and the Vice-President shall be inquired into and decided by the Supreme Court, whose decision shall be final.

#### **General Provisions Re: Elections**

**325.** There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

**326.** The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice,

shall be entitled to be registered as a voter at any such election.

**Power of Parliament to make provision with respect to elections to Legislatures**

**327.** Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

**Power of Legislature of a State to make provision with respect to elections to such Legislature**

**328.** Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the election to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

**Bar to interference by courts in electoral matters**

**329.** Notwithstanding anything in this Constitution—  
(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court; (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

**N.B.:** For further details please refer to pp. 210-214 above.



## CHAPTER XVII

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

(Arts. 330-342)

**330.** (1) Seats shall be reserved in the House of the People for—(a) the Scheduled Castes; (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

**331.** Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

**332.** (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may

be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

**333.** Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

Under Art. 334 it is provided that this concession will cease after 10 years from the commencement of this Constitution: Provided that nothing in Art. 334 shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Under Art. 335 it is provided that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs

of the Union or of a State. A similar provision is made for the Anglo-Indian community with respect to the posts in the railway, customs, posts and telegraph services of the Union, which for the period of two years shall be the same as it was before 1947 and after that during every succeeding period of two years, the number of posts reserved for them shall be less by ten per cent, so that after a period of ten years all such reservations shall cease.

**337.** During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

Under Art. 338. A special officer for the Scheduled Castes and Scheduled Tribes is to be appointed whose duty it is to investigate all matters relating to the safeguards provided for the Scheduled Castes and Tribes under this Constitution and to report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

**339.** (1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the

administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

**Appointment of a Commission to investigate the conditions of backward classes**

**340.** (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

**Scheduled Castes**

**341.** (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Consti-

tution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, or part of or group within any caste, race or tribe but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

**342.** (1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

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## CHAPTER XVIII

### OFFICIAL LANGUAGE

(Arts. 343-351 and Schedule 8)

**Official Language of the Union:** The Official language of the Union shall be Hindi in Devanagari script and the form of numerals to be used for official purposes shall be the international form of Indian numerals. The English language shall continue for a period of 15 years from the commencement of the Constitution to be used for all official purposes of the Union for which it was being used immediately before the commencement of this constitution. The President may, during the said period by order authorise the use of Hindi language in addition to the English language and of the Devanagari form of numeral in addition to international form of Indian numeral for any of the official purposes of the Union.

**Commission and Committee of Parliament on official language:** (Art. 344). The President shall, at the expiration of 5 years from the commencement of this constitution and thereafter at the expiration of 10 years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission. It shall be the duty of the Commission to make recommendation to the President as to—(a) the progressive use of the Hindi language for the official purposes of the Union; (b) restrictions on the use of the English language for all or any of the official purposes of the Union; (c) the language to be used for all or any of the purposes mentioned in Art. 348; (d) the form of numerals to be used for any one or more specified purposes of the Union; (e) any other matter referred to the Commission by the President as regards the official language of the Union

and the language for communication between the Union and a State or between one State and another and their use. In making their recommendations the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

**Parliamentary Committee:** There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote. It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon. Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5) issue directions in accordance with the whole or any part of that report.

#### REGIONAL LANGUAGES (ARTS. 345-347)

The Legislature of a State may adopt any language in use in the State or Hindi as the language to be used for all official purposes of that State or for official communication between States. If, however, a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, the President may direct that such language shall be so recognised.

#### LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC. (ARTS. 348-349)

**348.** All proceedings in the Supreme Court and in every High Court, the authoritative texts—of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State, of all Acts passed by Parliament or the Legislature of a State and of all Ordinances, promulgated

by the President or the Governor of a State, and of all orders, rule, regulation or bye-law, a translation of the same in the or under any law made by Parliament or the Legislature of a State, shall be in the English language. But the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State. But if the Legislature of a State has prescribed any language other than English language for use in Bills introduced, or Acts passed by the Legislature of a State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law, a translation of the same in the English language published under the authority of the Governor in the Official Gazette of that State shall be deemed to be the authoritative texts in the English language under this Article.

**Special procedure for enactment of certain laws relating to language:** ((Art. 349). During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

### **SPECIAL DIRECTIVES FOR DEVELOPING HINDI LANGUAGE**

**Language to be used in representations for redress of grievances**

**350.** Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used



in the Union or in the State, as the case may be.

**Facilities for instruction in mother-tongue at primary stage**

**350A.** It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

**Special Officer for linguistic minorities**

**350B.** (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

**Directive for development of the Hindi language**

**351.** It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the **Eighth Schedule** and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

**EIGHTH SCHEDULE**

[Articles 344 (1) and 351]

**Languages**

- |              |               |
|--------------|---------------|
| 1. Assamese. | 8. Marathi    |
| 2. Bengali.  | 9. Oriya.     |
| 3. Gujarati. | 10. Punjabi.  |
| 4. Hindi.    | 11. Sanskrit. |

- |               |             |
|---------------|-------------|
| 5. Kannada.   | 12. Tamil.  |
| 6. Kashmiri.  | 13. Telugu. |
| 7. Malayalam. | 14. Urdu.   |

**N.B.:** For further details please refer to pp. 215-217 above.

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## CHAPTER XIX

### EMERGENCY PROVISIONS

(Arts. 352-360 & 365)

**Proclamation of emergency:** If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory is threatened whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect. Such a Proclamation of emergency may be made even before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof or if the President is satisfied that the situation has arisen whereby the financial stability or the credit of India or any part of the territory thereof is threatened, he may, in all the above three cases make a declaration to that effect.

**Effects of Proclamation of Emergency:** 1. While a Proclamation of Emergency is in operation, then—the executive power of the Union shall extend to the giving of directions to any State as to the manner in which its executive power is to be exercised and the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties upon the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List: (Art. 353).

2. The President may direct that the provisions of Arts. 268 to 279 (which relate to the distribution of revenues) may be modified or shall have effect subject to such exceptions as he thinks fit: (Art. 254).

3. The third effect of a Proclamation of Emergency is that while it is in operation the provisions of Art. 19 may be suspended: (358).

4. The fourth and the last effect of a Proclamation of Emergency is that while it is in operation the President may

declare that the right to move any Court for the enforcement of the Fundamental Rights (mentioned in Part III above) and all proceedings for such enforcement may be suspended: (Art. 359).

**Effect of Proclamation of Emergency owing to Financial Stringency:** (Art. 360). While a Proclamation of Emergency (declared owing to financial stringency) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions. Any such direction may include two provisions viz.—(i) a provision requiring the reduction of salaries and allowances of persons serving a State, as also of persons serving the Union (including High Court and Supreme Court Judges) (ii) a provision requiring all Money Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.

**How revoked and when does it cease to operate:** (Art. 352(2) ). A Proclamation of emergency issued under clause (1) of Art. 352 may be revoked by a subsequent Proclamation and shall be laid before each House of Parliament. It shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. But if a Proclamation of Emergency is issued when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in Sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

## PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY IN STATES

(Arts. 356-57 & 365)

**Proclamation when made:** [Arts. 356(1)]: If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State; (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution (Art. 365).

**Its effects:** When a Proclamation of emergency has been issued under Art. 356 (1), and when it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent for Parliament to confer on the President

the power of the Legislature of the State to make laws, to delegate, subject to such conditions as he may think fit to impose, and the power so conferred to any other authority shall be specified by him in that behalf. It shall also be competent for Parliament or for the President or other authority in whom such power to make laws is vested as above, to make laws conferring powers and imposing duties, or authorising the conferring of powers and imposition of duties, upon the Union or officers and authorities thereof and to authorise when the House is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

## **EMERGENCY PROVISIONS**

### **PROVISIONS OF THE CONSTITUTION**

#### **Proclamation of Emergency**

**352.** (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

#### **Provisions as to financial emergency**

**360.** (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

**352.** (3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

#### **Provisions in case of failure of constitutional machinery in States**

**356.** (1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this

Constitution, the President may by Proclamation—(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State; (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty

days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

**352.** (2) A Proclamation issued under clause (1)—  
(a) may be revoked by a subsequent Proclamation; (b) shall be laid before each each House of Parliament; (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to



such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

### **Effect of Proclamation of Emergency**

**353.** While a Proclamation of Emergency is in operation, then—(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised; (b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

**354.** (1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

### **Suspension of provisions of article 19 during emergencies**

**358.** While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to

operate, except as respects things done or omitted to be done before the law so ceases to have effect.

**Suspension of the enforcement of the rights conferred by Part III during emergencies**

**359.** (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

**Exercise of legislative powers under Proclamation issued under article 356**

**357.** (1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf; (b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof; (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the

Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

### **Provisions as to financial emergency**

**360.** (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—  
(a) any such direction may include—

- (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
- (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

**N.B.:** For further details please refer to pp. 218-223 above.

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## CHAPTER XX

### AMENDMENT OF THE CONSTITUTION

In all written Constitutions of the world, a provision is always made for the amendment of such Constitutions so as to make them flexible and adaptable to changes which would easily allow the growth of a living, vital organic people. The process of amendment differs from one constitution to another, but in all cases the aim is that the power to amend the constitution is never intended to destroy the constitution. By the process of amendment no radical changes are contemplated because such changes can only be done by re-drafting the constitution and passing it again by the new Constituent Assembly appointed for this purpose.

In England, Parliament is supreme and there being no written constitution, any procedure or amendment can be adopted by Parliament by ordinary majority without any formality or restriction.

On the other hand, in some of the written constitutions like that of the U.S.A., Canada and Australia, detailed provisions have been made for the amendment of the Constitution. Under the American constitution an amendment can be proposed in two ways:—

1. By two-thirds vote of both Houses of Congress; or
2. By a Convention called together on the application of the Legislatures of two-thirds of the States.

The amendments proposed must be ratified by the Legislatures of or by conventions in three-fourths of the States.

The two Houses of the Congress have the necessary jurisdiction to determine the necessity for an amendment.

No amendment can be proposed without the consent of the State if it will affect the equality of status in the matter of representation in the Senate.

There have been 22 amendments to the U.S. Constitution so far.

In Canada, before 1949, the power of amending the Constitution was exercised by the Parliament of Great Britain on a joint address of both the Houses of Parliament being presented to the English Crown. But the Parliamentary Act of 1949 has, however, laid down that the Canadian Parliament can now amend the Constitution which falls within the jurisdiction of the Dominion Parliament. It means that the Canadian Parliament can amend the Provincial Constitution without the Imperial Act but it cannot alter the Federal distribution of powers.

Under the Australian Constitution, by Sec. 128, any amendment to the Constitution can be passed by an absolute majority of each House of the Central Parliament. Not less than two nor more than six months after proposed amendment has been passed, it should be referred to the people for their approval. If in a majority of the States people approve the proposed amendment, it is then presented to the Governor-General for the assent of the British Sovereign.

Any proposed amendment which in any manner diminishes the proportionate representation of a State in either House, or alters the limits of a State, or if it affects the provisions of the Constitution of a State, that State's consent must be obtained before the amendment is proposed and passed.

Minor matters like method of voting, privileges of the House, procedure in Elections, and etc. can be amended in the ordinary process of law making.

The framers of the Indian Constitution having gained from the experience of other countries have tried to strike a golden mean between the too easy procedure of amending the laws of the English Constitution and the elaborate and difficult procedure for the amendment adopted in the American Constitution. The framers wanted the constitution to be as flexible as it could be made. In doing so, they have not kept the constituent power and the legislative

power as two distinct instruments of law-making authority because most of the articles of the constitution can be amended by way of ordinary legislative power. The framers have also not taken into account the difficult procedure of referring the proposed amendment to the electors nor have they adopted a procedure in which a decision is arrived after a convention.

There is no definite provision to meet a situation in our constitution which may take place if the two Houses of Parliament disagree with regard to a proposed Bill for amendment of the Constitution. We may safely presume that the same procedure that is prescribed for the solution of such deadlocks for ordinary bills is also contemplated for the amendment of the constitution.

Art. 368 of our Constitution lays down different modes for the amendment of the Constitution. According to the Supreme Court Art. 368 is not a complete code in respect of procedure prescribed by it. There are lacunas in respect the procedure as to how and after what notice a Bill is to be introduced; how is it to be passed by each House; how is the assent of the President to be obtained? In the absence of any definite prescribed procedure the Supreme Court concludes, "evidently the rules made by each House under Art. 118 for regulating its procedure and the conduct of business were intended to apply so far as may be made applicable." Further, the constitution as originally framed, did not prescribe any time limit within which the States must signify their ratification or refusal to the amendments referred to them under Art. 368. However, this question has now been decided and the President has been given the power to prescribe a period within which the States must signify their assent or refusal to a proposed amendment. It was because of this provision that the process of the reorganisation of States was quickened.

In *Shankari Prasad v. Union of India*, 1951, the question arose whether the fundamental rights as incorporated in the Constitution have any sanctity. If so, then these provisions contained in Part III could not be amended like any

other provisions of the Constitution. With regard to this argument the Supreme Court has made very pertinent observations, "no doubt our Constitution-makers following American model have in regard to certain fundamental rights in Part III made them immune from interference by laws made by the State. We find it, however difficult in the absence of a clear indication to the contrary to suppose that they also intended to make those rights immune from constitutional amendment. On the other hand, the terms of Art. 368<sup>1</sup> are perfectly general and empower Parliament to amend the Constitution without any exception whatsoever."

The Indian Constitution lays down **three** distinct modes for amendment of its different provisions:—

I. A very large number of provisions as referred to the Arts. 4, 169 & 240 are open to alteration by the Union Parliament, by a simple majority. These matters will not be treated as "amendments of the Constitution."

II. In the case of a few matters relating to the federal structure of the Constitution a special mode is prescribed, namely, that the Bill for amendment must be passed by a two-thirds majority of the members of each House present and voting then, and ratified by the Legislatures of half the number of States.

III. The remaining provisions of the Constitution shall be liable to be amended by Parliament by a majority of two-thirds of the members of each House present and voting, provided that such majority exceeds fifty per cent of the total membership of that House.

No ratification by the State Legislatures will be required for these amendments. There is no provision in the Constitution which cannot be amended and Parliament may, by passing the Constitution Amendment Act, in compliance with the requirements of Art. 368, amend even Art. 368 itself.

## AMENDMENT OF THE CONSTITUTION

### Procedure for amendment of the Constitution

**368.** An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in



either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—(a) article 54, article 55, article 73, article 162 or article 241, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) and of the Lists in the Seventh Schedule, or (d) the representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

### CONSTITUTION (FIRST AMENDMENT) ACT, 1951

The constitution which was enacted on 26th January, 1950, was amended 15 months later in respect of some of its most vital provisions and 12 different articles viz. 15, 19, 29, 31, 85, 87, 174, 176, 341, 342, 372 and 376 were amended. The procedure for making amendment set out in Art. 368 was not followed. The amending Bill was passed by the provisional Parliament which had been formed under Rrt. 379 for the transitional period.

### FIVE CATEGORIES OF AMENDMENTS

The changes made in the Constitution by the First Amendment may be classified under five different categories. In the first category, Arts. 15, 19, 29 (2), and 31 relating to fundamental rights were amended. Art. 15 secures right to equality and it lays down that the State shall not discriminate against any citizen on the ground of race, caste, sex or place of birth but this general rule is subject to an exception allowing the State to make special provisions for the benefit of women and children. Similarly, Art. 29(2) provided

that admission to educational institutions maintained by the State or receiving grants from the State shall not deny admission to citizens on grounds only of religion, race, caste, language, or any of them. These two Articles were amended and provision was made for the benefit of backward classes by adding clause 4 to Art. 15, laying down that nothing in Art. 15 or in Art. 29(2) shall prevent the State from making special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

Art. 19 contains seven freedoms which are generally worded and are subject to express limitations contained in clauses (2) and (6) respectively. The amendment was made to widen the scope of clause (2) by redrafting the clause and adding three new matters in respect of which the State might make laws imposing restrictions, viz. friendly relations with foreign States, public order and incitement to an offence and the amended clause was given a retrospective operation as if it was so contained in the Constitution as originally enacted. Clause 6 was amended in order to remove any possible doubt regarding the constitutionality of any scheme of nationalisation which the State might undertake and the State was allowed to carry on any trade or business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise.

Art. 31 was amended by the addition of two new articles viz., 31A and 31B. Art. 31A makes no mention of compensation to be paid for acquisition of the estate; while Art. 31B legalises all the Zamindari Abolition and Land Reform Acts passed by different States Legislatures notwithstanding any inconsistency in the provisions of any of the Arts. relating to the fundamental rights and notwithstanding any judgement or order of a Court.

The second category of amendments related to certain matters of legislative procedure contained in Arts. 85, 87, 174, and 176. The original Art. 86 provided that Houses of Parliament shall be summoned to meet twice at least in every year and Art. 174 was for State Legislatures. The

amendment omitted the requirement of meeting twice every year. The original Art. 87 prescribed that the President shall address Parliament at the commencement of every session and Art. 176 was for the Governor. The amendment added the words "the first session after each general election and at the commencement of the first session of each year."

In the third category Arts. 341 and 342 were amended merely to make good the lacuna found in the original articles.

In the fourth category we have Art. 372(a) which was amended in order to extend the period from 2-to 3 years which empowered the President to make any adaption of laws within two years from the commencement of the Constitution.

In the fifth category we have amendment of the Art. 376 which provided that a Judge of a High Court shall not be disqualified for appointment as Chief Justice of a High Court merely because of the fact that he is not a citizen of India.

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# THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

## An Act to amend the Constitution of India.

BE it enacted by Parliament as follows:—

1. This Act may be called the Constitution (First Amendment) Act, 1951.

Amendment of article 15.

2. To article 15 of the Constitution, the following clause shall be added:—

“(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

Amendment of article 19 and validation of certain laws.

3. (1) In article 19 of the Constitution,—

(a) for clause (2), the following clause shall be substituted, and the said clause shall be deemed always to have been enacted in the following form, namely:—

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

(b) in clause (6), for the words beginning with the words “nothing in the said sub-clause” and ending with the words “occupation, trade or business”, the following shall be substituted, namely:—

“nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business,

industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

(2) No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of article 19 of the Constitution as amended by sub-section (1) of this section shall be deemed to be void, or ever to have become void, on the ground only that, being a law which takes away or bridges the right conferred by sub-clause (a) of clause (1) of the said article, its operation was not saved by clause (2) of that article as originally enacted.

*Explanation.*—In this sub-section, the expression "law in force" has the same meaning as in clause (1) of article 13 of the Constitution.

Insertion of new article 31A.

4. After article 31 of the Constitution, the following article shall be inserted, and shall be deemed always to have been inserted, namely:—

"31A. *Saving of laws providing for acquisition of estates, etc.*—(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,—(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam* or *muafi* or other similar grant; (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

Insertion of new article 31B.

5. After article 31A of the Constitution as inserted by section 4, the following article shall be inserted, namely:—

'31B. *Validation of certain Acts and Regulations.*—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in

the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

Amendment of article 85.

6. For article 85 of the Constitution, the following article shall be substituted, namely:—

"85 *Sessions of Parliament, prorogation and dissolution.*—

(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—(a) prorogue the Houses or either House; (b) dissolve the House of the People."

Amendment of article 87.

7. In article 87 of the Constitution,—

(1) in clause (1), for the words "every session" the words "the first session after each general election to the House of the People and at the commencement of the first session of each year" shall be substituted;

(2) in clause (2), the words "and for the precedence of such discussion over other business of the House" shall be omitted.

Amendment of article 174.

8. For article 174 of the Constitution, the following article shall be substituted, namely:—

"174. *Sessions of the State Legislature prorogation and dissolution.*—(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—(a) prorogue the House or either House; (b) dissolve the Legislative Assembly."

Amendment of article 176.

9. In article 176 of the Constitution,—

(1) in clause (1), for the words "every session" the words

"the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year" shall be substituted;

(2) in clause (2), the words "and for the precedence of such discussion over other business of the House" shall be omitted.

Amendment of article 341.

10. In clause (1) of article 341 of the Constitution, for the words "may, after consultation with the Governor or Rajpramukh of a State," the words "may with respect to any State, and where it is a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof;" shall be substituted.

Amendment of article 342.

11. In clause (1) of article 342 of the Constitution, for the words "may, after consultation with the Governor or Rajpramukh of a State," the words "may with respect to any State, and where it is a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof," shall be substituted.

Amendment of article 372.

12. In sub-clause (a) of clause (3) of article 372 of the Constitution, for the words "two years" the words "three years" shall be substituted.

Amendment of article 376.

13. At the end of clause (1) of article 376 of the Constitution, the following shall be added, namely:—

"Any such judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court."

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## THE CONSTITUTION (SECOND AMENDMENT) ACT, 1952

As a result of an increase in population, as disclosed by the 1951 Census, it was felt that the provision in Art. 81(1)(b) be changed to:—"For the purpose of sub-clause (a), the States shall be divided, grouped or formed into territorial constituencies and the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population." The increase in population necessitated a change in the total number of members of the House of People, which according to Art. 81(1)(a) was to be not more than 500 members directly elected by the voters in the States. Therefore, the Constitution Second Amendment Act, 1952 was passed for the said purpose.

1. This Act may be called the Constitution (Second Amendment) Act, 1952.  
Amendment of article 81.

2. In sub-clause (b) of clause (1) of article 81 of the Constitution, the words and figures "not less than one member for every 750,000 of the population and" shall be omitted.

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## THE CONSTITUTION (THIRD AMENDMENT) ACT, 1954

The Constitution third Amendment Act, 1954 was passed because the concurrent power conferred on the Union by Art. 369 in respect of certain commodities was for a temporary period ending with 25th January, 1955. It was, therefore, felt necessary that the Centre should continue to have its control over other States with respect to certain commodities in the interest of national economy. The Committee which was appointed to look into this question of the control of the Government of India recommended that the said control be continued over the commodities specified in Art. 369 for an indefinite period in the interest of proper distribution and supply of the essential commodities and also in the interest of maintenance of the industries themselves. Hence Entry 33 of List III was amended so as to include the matters specified in the expiring Art. 369. The assent of the President was given to this Act on 22nd February, 1955 from which date it became law.

1. This Act may be called the Constitution (Third Amendment) Act, 1954.

Amendment of the Seventh Schedule.

2. In the Seventh Schedule to the Constitution, for entry 33 of List III, the following entry shall be substituted, namely:—

“33. Trade and commerce in, and the production, supply and distribution of,—(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; (b) foodstuffs, including edible oilseeds and oils; (c) cattle fodder, including oilcakes and other concentrates; (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.”

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## THE CONSTITUTION (FOURTH AMENDMENT) ACT, 1955

The Constitution Fourth Amendment Act had to be passed because of the ambiguity in the meaning of Art. 31(1) and (2). In several cases before the Supreme Court, the question with regard to the compensation for deprivation of property was discussed and it was held that clauses (1) and (2) of Art. 31 are not mutually exclusive in scope but must be read together. It was further held that any appropriation of property of a subject by any State without the consent of the owners should necessarily be compensated. In the leading case of *Sholapur Spg. & Wvg. Co.* it was held that the difference between *restriction and deprivation* is only one of degree and when the State tries to deprive the owner of a subsisting right of ownership, however small and negligent that deprivation may be or however significant in the national interest such a deprivation may be, it must be held to be a case of deprivation under Art. 31. Therefore, compensation must be paid in all cases of deprivation in any manner whatsoever. In the *Sholapur Mills Case*, the Union Government passed an Ordinance taking over the properties and effects of the Mills and passed it into the hands of certain persons nominated by the Union Government, but who were not members of the Mills. The Central Government by virtue of this Ordinance became vested with control and management of the company through the nominated directors. It was held that it was deprivation of property within the meaning of clause 1 of Art. 31 without payment of compensation as was required under clause (2) and hence the Ordinance was void. The Court in coming to this conclusion referred to the *four limitations* as laid down in Art. 31, with regard to the deprivation of property of the citizens by any State. These limitations are:—

(1) No person can be deprived of his property by an order of the Executive. Hence Legislative sanction must be obtained for the exercise of this power;

(2) The deprivation of property must be for a public purpose;

(3) Compensation must be paid for any property compulsorily acquired or requisitioned by the State; and

(4) Any abridgement of the possession which is substantial to the ownership of property can be construed as deprivation of property within the meaning of Art. 31.

The Supreme Court further ruled that the *manner or method* by which the property is requisitioned is irrelevant to the interpretation of Art. 31. To meet with all these difficulties, the Constitution Fourth Amendment Act was passed by which the practical difficulties in putting through some of the welfare schemes could be over-come.

1. This Act may be called the Constitution (Fourth Amendment) Act, 1955.

Amendment of article 31.

2. In article 31 of the Constitution, for clause (2), the following clauses shall be substituted, namely:—

“(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.”

Amendment of article 31A.

3. In article 31A of the Constitution,—(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(1) Notwithstanding anything contained in article 13, no law providing for—(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral

oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent"; and

(b) in clause (2),—(i) in sub-clause (a) after the word "grant", the words "and in the States of Madras and Travancore-Cochin, any *janmam* right" shall be, and shall be deemed always to have been, inserted ; and (ii) in sub-clause (b), after the word "tenure, holder", the words "*raiyat, under-raiyat*" shall be-and shall be deemed always to have been, inserted.

Substitution of new article for article 305.

4. For article 305 of the Constitution, the following article shall be substituted, namely:—

Saving laws existing and laws providing for State monopolies.

"305. Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19."

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## THE CONSTITUTION (FIFTH AMENDMENT) ACT, 1955

The Fifth Amendment Act was passed in order to fill in the lacuna that no time limit was fixed for the States to submit their opinion with regard to any amendment referred to them in which they were vitally concerned. In order that the States' Reorganisation Act may be passed without any delay or difficulty, Art. 3 as it stood was amended as follows:—

“Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.”

1. This Act may be called the Constitution (Fifth Amendment) Act, 1955.  
Amendment of article 3.

2. In article 3 of the Constitution, for the proviso, the following proviso shall be substituted, namely:—

“Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.”

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## THE CONSTITUTION (SIXTH AMENDMENT) ACT, 1956

The Sixth Amendment Act was necessitated for placing taxes on inter-State sales and purchases within the exclusive power of the Union. It was felt that Parliament should have exclusive power to formulate by law principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. The Art. 286(1) created a great deal of legal controversy on this issue and it was difficult to decide when a sale or purchase of goods which takes place outside a State or in the course of import of the goods into the territory of India or in the course of export of the goods out of the territory of India, what interpretation should be given to this particular Art. 286(1). In order to meet with this difficulty, the Explanation to Art. 286(1) had to be amended and further minor changes were also necessitated by settling conflicts between the different States with regard to inter-State trade, commerce and taxation.

1. This Act may be called the Constitution (Sixth Amendment) Act, 1956 (passed on 11th Sept., 1956).

Amendment of the Seventh Schedule.

2. In the Seventh Schedule to the Constitution,—

(a) in the Union List, after entry 92, the following entry shall be inserted, namely:—

“92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce”; and

(b) in the State List, for entry 54, the following entry shall be substituted, namely:—

“54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.”

Amendment of article 269.

3. In article 269 of the Constitution,—

(a) in clause (1), after sub-clause (f), the following sub-clause shall be inserted, namely:—

“(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce”; and

(b) after clause (2), the following clause shall be inserted, namely:—

“(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.”

Amendment of article 286.

4. In article 286 of the Constitution,—

(a) in clause (1), the *Explanation* shall be omitted; and

(b) for clauses (2) and (3), the following clauses shall be substituted, namely:—

“(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1);

(3) any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”

## THE CONSTITUTION (SEVENTH AMENDMENT) ACT, 1956

The Constitution Seventh Amendment Act, 1956, is perhaps the most important amendment so far introduced because by this Amendment very far reaching changes have been made. The amendment has sought to bring uniformity in general in the constituent units making-up the Indian Union. It re-draws the political map of India, thereby substantially changing the geographical boundaries of some of the States existing before 1st November, 1956. The far-reaching changes introduced by the Seventh Amendment have been discussed in Chapter IX above.

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# THE CONSTITUTION (SEVENTH AMENDMENT) ACT, 1956

## An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Constitution (Seventh Amendment) Act, 1956.

(2) It shall come into force on the 1st day of November, 1956.

Amendment of article 1 and First Schedule.

2. (1) In article 1 of the Constitution,—(a) for clause (2), the following clause shall be substituted, namely:—“(2) The States and the territories thereof shall be as specified in the First Schedule”; and (b) in clause (3), for sub-clause (b), the following sub-clause shall be substituted, namely:—“(b) the Union territories specified in the First Schedule; and”.

(2) For the First Schedule to the Constitution as amended by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956, the following Schedule shall be substituted, namely:—

### ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be.

TABLE

1. Andhra Pradesh	18	10. Punjab	11
2. Assam	7	11. Rajasthan	10
3. Bihar	22	12. Uttar Pradesh	34
4. Bombay	27	13. West Bengal	16
5. Kerala	9	14. Jammu and Kashmir	4
6. Madhya Pradesh	16	15. Delhi	3
7. Madras	17	16. Himachal Pradesh	2
8. Mysore	12	17. Manipur	1
9. Orissa	10	18. Tripura	1
		TOTAL	220."

Substitution of new articles for articles 81 and 82.

4. For articles 81 and 82 of the Constitution, the following articles shall be substituted, namely:—

Composition of the House of the People.

“81. (1) Subject to the provisions of article 331, the House of the People shall consist of—(a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and (b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—  
(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census.

82. Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.”

Amendment of article 131

5. In article 131 of the Constitution, for the proviso, the following proviso shall be substituted, namely:—

“Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

Amendment of article 153.

6. To article 153 of the Constitution, the following proviso shall be added, namely:—

“Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.”

Amendment of article 158

7. In article 158 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

“(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.”

Amendment of article 168.

8. (1) In clause (1) of article 168 of the Constitution, in sub-clause (a), after the word “Madras”, the word “Mysore” shall be inserted.

(2) In the said sub-clause, as from such date as the President may, by public notification appoint, after the word “Bombay”, the words “Madhya Pradesh” shall be inserted.

Substitution of new article for article 170.

9. For article 170 of the Constitution, the following article shall be substituted, namely:—

Composition of the Legislative Assemblies.

“170 (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

*Explanation.*—In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representa-

tion in the Legislative Assembly until the dissolution of the then existing Assembly."

Amendment of article 171.

**10.** In clause (1) of article 171 of the Constitution, for the word "one-fourth", the word "one-third" shall be substituted.

Amendment of article 216.

**11.** In article 216 of the Constitution, the proviso shall be omitted.

Amendment of article 217.

**12.** In article 217 of the Constitution, in clause (1), for the words "shall hold office until he attains the age of sixty years", the following words and figures shall be substituted, namely:—

"shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty years."

Substitution of new article for article 220.

**13.** For article 220 of the Constitution, the following article shall be substituted, namely:—

Restriction on practice after being a permanent Judge.

"220. No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

*Explanation.*—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956."

Amendment of article 222.

**14.** In article 222 of the Constitution,—(a) in clause (1), the words "within the territory of India" shall be omitted; and (b) clause (2) shall be omitted.

Substitution of new article for article 224.

**15.** For article 224 of the Constitution, the following article shall be substituted, namely:—

Appointment of additional and acting Judges.

"224 (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty years."

Substitution of new articles for articles 230, 231 and 232.

**16.** For articles 230, 231 and 232 of the Constitution, the following articles shall be substituted, namely:—

Extension of jurisdiction of High Courts to Union territories.

"230 (1) Parliament may by law extend the jurisdiction of a High Court, to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory,—(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and (b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

Establishment of a common High Court for two or more States.

231. (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction; (b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate; and (c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India."

## Amendment of Part VIII.

17. In Part VIII of the Constitution,—(a) for the heading “THE STATES IN PART C OF THE FIRST SCHEDULE”, the heading “THE UNION TERRITORIES” shall be substituted; and (b) for articles 239 and 240, the following articles shall be substituted, namely:—

Administration of Union territories.

239. (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Power of President to make regulations for certain Union territories.

240. (1) The President may make regulations for the peace, progress and good government of the Union territory of—

(a) the Andaman and Nicobar Islands; (b) the Laccadive, Minicoy and Amindivi Islands.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.”

Insertion of new article 258A.

18. After article 258 of the Constitution, the following article shall be inserted, namely:—

Power of the States to entrust functions to the Union.

“258A. Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.”

Insertion of new article 290A.

19. After article 290 of the Constitution, the following article shall be inserted, namely:—

Annual payment to certain Devaswom Funds.

“290. A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom

Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Madras every year to the 'Devaswom Fund' established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin."

Substitution of new article for article 298.

**20.** For article 298 of the Constitution, the following article shall be substituted, namely:—

Power to carry on trade, etc.

"298. The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

Insertion of new articles 350A and 350B.

**21.** After article 350 of the Constitution, the following articles shall be inserted, namely:—

Facilities for instruction in mother-tongue at primary stage.

"350A. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he consider necessary or proper for securing the provision of such facilities.

Special Officer for linguistic minorities.

350B. (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned."



**22.** For article 371 of the Constitution, the following article shall be substituted, namely:—

Special provision with respect to the States of Andhra Pradesh, Punjab and Bombay.

“371. (1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh or Punjab, provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Bombay, provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly; (b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and (c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.”

Insertion of new article 372A.

**23.** After article 372 of the Constitution, the following article shall be inserted, namely:—

Power of the President to adapt laws.

“372A. (1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a



competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause."

Insertion of new article 378A.

24. After article 378 of the Constitution, the following article shall be inserted, namely:—

Special provision as to duration of Andhra Pradesh Legislative Assembly.

"378A. Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of sections 28 and 29 of the States Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly."

Amendment of Second Schedule.

25. In the Second Schedule to the Constitution,—(a) in the heading of Part D, the words and letter "in States in Part A of the First Schedule" shall be omitted; (b) in sub-paragraph (1) of paragraph 9, for the words "shall be reduced by the amount of that pension", the following shall be substituted, namely:—

"shall be reduced—(a) by the amount of that pension, and (b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity"; and

(c) in paragraph 10—

(i) for sub-paragraph (1), the following sub-paragraph shall be substituted, namely:—

"(1) There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary in the following rates per mensem, that is to say,—

The Chief Justice . . . 4,000 rupees.

Any other Judge . . . 3,500 rupees.

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—(a) by the amount of that pension, and (b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous ser-

vice the commuted value thereof, by the amount of that portion of the pension, and (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity"; and

(ii) for sub-paragraphs (3) and (4); the following sub-paragraph shall be substituted, namely:—

"(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by the said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph."

Modification of entries in the Lists relating to acquisition and requisitioning of property.

**26.** In the Seventh Schedule to the Constitution, entry 33 of the Union List and entry 36 of the State List shall be omitted and for entry 42 of the Concurrent List, the following entry shall be substituted, namely:—

"42. Acquisition and requisitioning of property."

Amendment of certain provisions relating to ancient and historical monuments, etc.

**27.** In each of the following provisions of the Constitution, namely:—(i) entry 67 of the Union List, (ii) entry 12 of the State List, (iii) entry 40 of the Concurrent List, and (iv) article 49, for the words "declared by Parliament by law", the words "declared by or under law made by Parliament" shall be substituted.

Amendment of entry 24 of State List.

**28.** In the Seventh Schedule to the Constitution, in entry 24 of the State List, for the word and figures "entry 52", the words and figures "entries 7 and 52" shall be substituted.

Consequential and minor amendments and repeals and savings.

**29.** (1) The consequential and minor amendments and repeals directed in the Schedule shall be made in the Constitution and in the Constitution (Removal of Difficulties) Order, No. VIII, made under article 392 of the Constitution.

(2) Notwithstanding the repeal of article 243 of the Constitution by the said Schedule, all regulations made by the President under that article and in force immediately before the commencement of this Act shall continue in force until altered or repealed or amended by a competent Legislature or other competent authority.

## THE SCHEDULE

(See section 29)

### CONSEQUENTIAL AND MINOR AMENDMENTS AND REPEALS IN THE CONSTITUTION

*Article 3.*—In the proviso, omit “specified in Part A or Part B of the First Schedule”.

*Article 16.*—In clause (3) for “under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State” substitute—

“under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory”.

*Article 31A.*—In sub-clause (a) of clause (2), for “Travancore-Cochin” substitute “Kerala”.

*Article 58.*—In the *Explanation*, omit “or Rajpramukh or Uparajpramukh”.

*Article 66.*—In the *Explanation*, omit “or Rajpramukh or Uparajpramukh”.

*Article 72.*—In clause (3), omit “or Rajpramukh”.

*Article 73.*—In the proviso to clause (1), omit “specified in Part A or Part B of the First Schedule”.

*Article 101.*—In clause (2), omit “specified in Part A or Part B of the First Schedule”, and for “such a State” substitute “a State”.

*Article 112.*—In sub-clause (d) (iii) of clause (3), for “a Province corresponding to a State specified in Part A of the First Schedule”, substitute “a Governor’s Province of the Dominion of India”.

*Article 143.*—In clause (2), omit “clause (i) of” and for “said clause” substitute “said proviso”.

*Article 151.*—In clause (2), omit “or Rajpramukh”.

*Part VI.*—In the heading, omit “IN PART A OF THE FIRST SCHEDULE”.

*Article 152.*—For “means a State specified in Part A of the First Schedule” substitute “does not include the State of Jammu and Kashmir”.

*Article 214.*—Omit “(1)” and clauses (2) and (3).

*Article 217.*—In sub-clause (b) of clause (2), omit “in any State specified in the First Schedule”.

*Article 219.*—Omit “in a State”.

*Article 229.*—In the proviso to clause (1) and in the proviso to clause (2), omit “in which the High Court has its principal seat”.

*Omit Part VII.*

*Article 241.*—(a) In clause (1), for “State specified in Part C of the First Schedule”, substitute “Union territory”, and for “such State”, substitute “such territory”.

(b) For clauses (3) and (4), substitute—

“(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.”

*Omit article 242.*

*Omit Part IX.*

*Article 244.*—Omit “specified in Part A or Part B of the First Schedule”.

*Article 246.*—In clauses (2) and (3), omit “specified in Part A or Part B of the First Schedule” and in clause (4), for “in Part A or Part B of the First Schedule” substitute “in a State”.

*Article 254.*—In clause (2), omit “specified in Part A or Part B of the First Schedule”.

*Article 255.*—Omit “specified in Part A or Part B of the First Schedule”.

*Omit article 259.*

*Article 264.*—For article 264, substitute—

*Interpretation.*

“264. In this Part, ‘Finance Commission’ means a Finance Commission constituted under article 280”.

*Article 267.*—In clause (2), omit “or Rajpramukh”.

*Article 268.*—In clause (1), for “State specified in Part C of the First Schedule” substitute “Union territory”.

*Article 269.*—In clause (2), for “States specified in Part C of the First Schedule” substitute “Union territories”.

*Article 270.*—In clauses (2) and (3), for “States specified in Part C of the First Schedule” substitute “Union territories”.

*Omit article 278.*

*Article 280.*—In clause (3), omit sub-clause (c) and re-letter sub-clause (d) as sub-clause (c).

*Article 283.*—In clause (2), omit “or Rajpramukh”.

*Article 291.*—Omit “(1)” and clause (2).

*Article 299.*—In clause (1), omit “or the Rajpramukh”, and in clause (2), omit “nor the Rajpramukh”.

*Article 304.*—In clause (a), after “other States”, insert “or the Union territories”.

*Omit article 306.*

*Article 308.*—For “means a State specified in Part A or Part B of the First Schedule”, substitute “does not include the State of Jammu and Kashmir”.

*Article 309.*—Omit “or Rajpramukh”.

*Article 310.*—In clause (1), omit “or, as the case may be, the Rajpramukh”, and in clause (2), omit “or Rajpramukh” and “or the Rajpramukh”.

*Article 311.*—In clause (2), omit “or Rajpramukh”.

*Article 315.*—In clause (4), omit “or Rajpramukh”.

*Article 316.*—In clauses (1) and (2), omit “or Rajpramukh”.

*Article 317.*—In clause (2), omit “or Rajpramukh”.

*Article 318.*—Omit “or Rajpramukh”.

*Article 320.*—In clause (3), omit “or Rajpramukh” and “or Rajpramukh, as the case may be”, and in clause (5), omit “or Rajpramukh”.

*Article 323.*—In clause (2), omit “or Rajpramukh” and “or Rajpramukh, as the case may be”.

*Article 324.*—In clause (6), omit “or Rajpramukh”.

*Article 330.*—In clause (2), after “State” wherever it occurs, insert “or Union territory”.

*Article 332.*—In clause (1), omit “specified in Part A or Part B of the First Schedule”.

*Article 333.*—Omit “or Rajpramukh”.

*Article 337.*—Omit “specified in Part A or Part B of the First Schedule”.

*Article 339.*—In clause (1), omit “specified in Part A and Part B of the First Schedule” and in clause (2), for “any such State” substitute “a State”.

*Article 341.*—In clause (1), after “any State” insert “or Union territory”, omit “specified in Part A or Part B of the First Schedule”, omit “or Rajpramukh” and after “that State” insert “or Union territory, as the case may be”.

*Article 342.*—In clause (1), after “any State” insert “or Union territory”, omit “specified in Part A or Part B of the First Schedule”, omit “or Rajpramukh” and after “that State” insert “or Union territory, as the case may be”.

*Article 348.*—Omit “or Rajpramukh”.

*Article 356.*—In clause (1), omit “or Rajpramukh” and “or Rajpramukh, as the case may be”.

*Article 361.*—In clauses (2), (3) and (4), omit “or Rajpramukh” and in clause (4), omit “or the Rajpramukh”.

*Article 362.*—Omit “clause (1) of”.

*Article 366.*—Omit clause (21), and for clause (30), substitute—

“(30) ‘Union territory’ means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule”.

*Article 367.*—In clause (2), omit “specified in Part A or Part B of the First Schedule” and “or Rajpramukh”.

*Article 368.*—Omit “specified in Parts A and B of the First Schedule”.

*Omit articles 379 to 391, both inclusive.*

*Second Schedule.*—(a) In the heading of Part A and in paragraph 1, omit “specified in Part A of the First Schedule”; (b) in paragraph 2, omit “so specified”; (c) in paragraph 3, for “such States” substitute “the States”; (d) omit Part B; (e) in the heading of Part C, omit “of a State in Part A of the First Schedule”, and for “any such State” substitute “a State”; and (f) in paragraph 8, omit “of a State specified in Part A of the First Schedule”, and for “such State” substitute “a State”.

*Fifth Schedule.*—(a) In paragraph 1, omit “means a State specified in Part A or Part B of the First Schedule but”; (b) in paragraph 3, omit “or Rajpramukh”; (c) in paragraph 4, in sub-paragraph (2), omit “or Rajpramukh, as the case may be” and in sub-paragraph (3), omit “or Rajpramukh”; (d) in paragraph 5, in sub-paragraphs (1) and (2), omit “or Rajpramukh, as the case

may be", in sub-paragraph (3), omit "or Rajpramukh" and in sub-paragraph (5), omit "or the Rajpramukh".

*Sixth Schedule.*—In paragraph 18, in sub-paragraph (2), for "Part IX" substitute "article 240", and for "territory specified in Part D of the First Schedule" substitute "Union territory specified in that article".

*Seventh Schedule.*—In List I,—(a) in entry 32, omit "specified in Part A or Part B of the First Schedule"; and (b) for entry 79, substitute,—

"79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from any Union territory."

### CONSEQUENTIAL AMENDMENTS IN THE CONSTITUTION

#### (REMOVAL OF DIFFICULTIES) ORDER NO. VIII

In the Constitution (Removal of Difficulties) Order No. VIII, for sub-paragraphs (1), (2) and (3) of paragraph 2, substitute—

"(1) In article 81,—(a) in sub-clause (b) of clause (1), after the words "Union territories", the words, letter and figures "and the tribal areas specified in Part B of the Table appended to paragraph 20 of the Sixth Schedule" shall be inserted; and (b) to clause (2), the following proviso shall be added, namely:—

"Provided that the constituencies into which the State of Assam is divided shall not comprise the tribal areas specified in Part B of the Table appended to paragraph 20 of the Sixth Schedule".

(2) In clause (2) of article 170, after the words "throughout the State" the following proviso shall be inserted, namely:—

"Provided that the constituencies into which the State of Assam is divided shall not comprise the tribal areas specified in Part B of the Table appended to paragraph 20 of the Sixth Schedule." "

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